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UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

TRANSAMERICA INSURANCE GROUP,

Plaintiff,

v

File No. 1:89-cv-1042

RYDER SYSTEM, INC.,

Defendant.

JUDGMENT

In accordance with the opinion entered this date;

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment is **GRANTED;**

IT IS FURTHER ORDERED that defendant Ryder System, Inc.'s cross motion for summary judgment is **DENIED.**

DATED in Kalamazoo, MI:

Sept 19, 1990

RICHARD A. ENSLEN
U.S. District Judge

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

TRANSAMERICA INSURANCE GROUP,

Plaintiff,

v File No. 1:89-cv-1042

RYDER SYSTEM, INC.,

Defendant.

OPINION

This case comes before the Court on the parties' cross motions for summary judgment. According to facts stipulated to by the parties, this case arises out of a February 13, 1988 auto accident in which the insured victim at the time of the incident was a beneficiary of or participant in two policies providing coverage for medical expenses: one, a no-fault auto insurance policy; and the other, an employee benefit plan. The plan is an employee benefit plan within the meaning of 29 U.S.C. § 1102(B)(3), 1103 and 1101 of the Employment Retirement Income Security Act (ERISA). Plaintiff, the no-fault insurance carrier, paid the medical expenses incurred by the victim as a result of the accident and anticipates claims for additional expenses.

Plaintiff filed the complaint in state court seeking relief under state law. Defendant removed the action to federal court under 28 U.S.C. § 1441 with proper jurisdiction based on diversity. 28 U.S.C. § 1332. Plaintiff seeks reimbursement from defendant of

all or a portion of the amount paid for insured's medical expenses under Michigan's coordinated benefits law, Mich. Comp. Laws Ann. § 500.3109a (West Supp. 1983). Defendant, arguing that plaintiff's claim is preempted by ERISA, which would give effect to the escape clause in its policy, seeks summary judgment in its favor. "The sole question of liability for this Court to decide is which of the parties has the obligation for payment of the medical expenses incurred by [insured] as a result of the accident." Stipulation of Facts, June 28, 1990, at 2.

Standard

In reviewing a motion for summary judgment, this Court should only consider the narrow questions of whether there are "no genuine issues as to any material fact and [whether] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. Proc. 56(c). On a Rule 56 motion, the Court cannot try issues of fact, but is empowered to determine only whether there are issues in dispute to be decided in a trial on the merits. Gutierrez v. Lynch, 826 F.2d 1534, 1536 (6th Cir. 1987); In re Atlas Concrete Pipe, Inc., 668 F.2d 905, 908 (6th Cir. 1982). The crux of the motion is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986); see Booker v. Brown & Williamson Tobacco Co., Inc., 879 F.2d 1304, 1310 (6th Cir. 1989).

A motion for summary judgment requires this Court to view "'inferences to be drawn from the underlying facts ... in the light

most favorable to the party opposing the motion.'" Matsushita Electric Ind. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)), quoted in Historic Preservation Guild of Bay View v. Burnley, 896 F.2d 985, 993 (6th Cir. 1989). The opponent, however, has the burden to show that a "rational trier of fact [could] find for the non-moving party [or] that there is a 'genuine issue for trial.'" Historic Preservation, 896 F.2d at 993 (quoting Matsushita, 475 U.S. 587).

As the Sixth Circuit has recognized and heartily supported, recent Supreme Court decisions have encouraged the granting of summary judgments. Historic Preservation, 896 F.2d at 993 (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)). The Courts have noted that the summary judgment motion may be an "appropriate avenue for the 'just, speedy and inexpensive determination' of a matter." Cloverdale Equipment Co. v. Simon Aerials, Inc., 869 F.2d 934, 937 (6th Cir. 1989) (quoting Celotex, 477 U.S. at 327). Consistent with the concern for judicial economy, "the mere existence of a scintilla of evidence in support of the [non-moving party's] positions will be insufficient." Anderson, 477 U.S. at 252. "Mere allegations do not suffice." Cloverdale, 869 F.2d at 937. "[T]he party with the burden of proof at trial is obligated to provide concrete evidence supporting its claims and establishing the existence of a genuine issue of fact." Id.

Discussion

a. Provisions

Plaintiff's no-fault insurance policy contains a coordination of benefits provision. The provision states in relevant part that Transamerica is not liable for any expenses to the extent that the insured is covered for those expenses under the provisions of any "valid and collectible...medical or surgical reimbursement plan." Plaintiff's Motion for Summary Judgment, June 29, 1990, at 2 & attachments.

The employee benefits plan also contains a coordination of benefits provision that applies to personal injuries caused by an automobile accident. The plan has a general clause excluding reimbursement for expenses paid "for any injury...incurred as a result of any vehicular accident." The plan does, however, allow recovery for expenses incurred as a result of an auto accident under one circumstance. If the participant has no other coverage for personal injuries arising from a vehicular accident, the Benefits Committee may consider benefits payments.[1] Defendant Ryder System, Inc.'s Cross Motion for Summary Judgment, Ex. B, at 48-49.

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[1] The Plan provides: "A Participant may not elect, when given the option, to make this Plan primary to his vehicular insurance. The Benefits Committee may, however, consider benefits payments for charges incurred as the result of a vehicular Accident for which expenses are not recoverable under any form of insurance or other indemnification." Defendant Ryder System, Inc.'s Cross Motion for Summary Judgment, July 2, 1990, Ex. B, at 49.

b. State Law

Section 3109a provides in relevant part that a no-fault automobile insurer that provides "personal protection benefits" must offer the coverage at reduced rates with a coordination of benefits provision related to the insured's other health and accident coverage. Mich. Comp. Laws Ann. § 500.3109a (West Supp. 1983). There is a dual purpose behind the law: 1) to coordinate health and accident insurance benefits under the no-fault policy with benefits the insured may have under another policy--eg. workman's compensation benefits--at a reduced rate, so that fewer people receive duplicative recovery, Nyquist v. Aetna Ins. Co., 84 Mich. App. 589, 592, aff'd, 404 Mich. 817 (1978); and 2) to contain health care and health insurance costs, Federal Kemper v. Health Ins., 424 Mich. 537, 551 (1986).

The state courts have interpreted section 3109a to mean that when an insured has personal injury coverage under both a no-fault automobile insurance policy and another policy that includes coordinated benefits for medical expenses arising out of an automobile accident, the latter policy is the primary insurer. Federal Kemper, 424 Mich. at 551. Because defendant's plan includes a provision allowing benefits under some circumstances --i.e. if participant has no other coverage--for auto accident related injuries, it is not a true exclusion clause, but rather what is in essence a coordinated benefits clause. Transamerican Ins. Co. of North America v. Peerless Indus., 698 F.Supp. 1350 (W.D. Mich. 1988); Federal Kemper, 424 Mich. at 542-44; Auto-Owners

Ins. Co. v. Lacks Indus., 156 Mich. App. 837 (1986), lv. den., 428 Mich. 902 (1987). If not subject to preemption under ERISA, application of section 3109a would result in defendant's plan being the primary benefits provider.

c. Preemption

Defendant's health plan is a self-insured plan governed by ERISA, 29 U.S.C. 1001 et seq. At issue is whether ERISA preempts application of Michigan's No-Fault Insurance Act, Mich. Comp. Laws Ann. § 500.3100 et seq. (West Supp. 1983). ERISA has three provisions relating to preemption: 1) the general preemption clause, 29 U.S.C. § 1144(a); 2) the "savings" clause, 29 U.S.C. § 1144(b)(2)(A); and 3) the "deemer" clause, 29 U.S.C. § 1144(b)(2)(B).

The general preemption clause expressly preempts application of a state law that "relates to" an employee benefit plan. A state law relates to a benefit plan if it has a connection or reference to such a plan. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987). Judicial construction of section 3109a, Mich Comp. Laws Ann. § 500.3109a (West Supp. 1983), requires an employee benefit health plan to assume primary liability in spite of the plan's conflicting coordination of benefits clause. Section 3109a, therefore, relates to an employee benefit plan. Auto-Owners v. Corduroy Rubber, 177 Mich.App. 600, 603 (1989).

The ERISA savings clause, however, excludes from preemption any state law which "regulates insurance." A law regulates insurance not merely by having an impact on the insurance industry,

but by being specifically directed toward the insurance industry. Pilot Life, 481 U.S. at 49. Section 3109a allocates risks and controls terms contained in insurance contracts and as such must be viewed as a law that regulates insurance. Northern Group Services v. Auto-Owners Ins. Co., 833 F.2d 85 (6th Cir. 1987), cert. denied, 486 U.S, 1017 (1988).

Nevertheless, even if the state law does regulate insurance, it is still preempted if it falls within the deemer clause. The deemer clause provides that an employee benefit plan shall not be deemed an insurer for purposes of state insurance regulation. Pilot Life, 481 U.S. at 45. The Sixth Circuit in Northern Group Services considered the applicability of the deemer clause to a claim for reimbursement from a self-insured ERISA plan under Section 3109a. The court applied a balancing test to determine whether the employee benefit plan should be deemed an insurer for purposes of ERISA preemption. It balanced "the interests in federal uniformity against those of state primacy in the regulation of insurance." Northern Group Services, 833 F.2d at 93. Applying that test to a self-insured ERISA plan with a coordinated benefits clause, the Sixth Circuit found little demonstrated interest in national uniformity and concluded that preemption of the state law would substantially disrupt the state's interest in a uniform rule for allocating comparative liability among insurers. The court held that Michigan's no-fault coordination of benefits law, section 3109a, is a type of insurance regulation that is not preempted by ERISA in these circumstances.

Conclusion

Defendant in this case has come forth with no evidence showing how the federal interests in national uniformity might outweigh the state interests. For this reason, I conclude that section 3109a as applied to the facts in this case is not preempted by ERISA. Under Michigan law, Federal Kemper and its progeny are controlling. I find as a matter of law that the clause in defendant's plan is in essence a coordinated benefits clause. Thus, under section 3109a, defendant's plan is deemed the primary benefits provider for insured's medical expenses arising out of the automobile accident of February 13, 1988. Defendant is obligated to reimburse plaintiff for the expenses it paid. Accordingly, I grant plaintiff's motion for summary judgment and deny defendant's cross motion for summary judgment.

Dated: Sept 19, 1990

RICHARD A. ENSLEN
United States District Judge