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# STATE OF MICHIGAN

## COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

AUTODIE CORPORATION EMPLOYEE BENEFIT PLAN,

Defendant-Appellee,

and

CHAD ALAN LAKE,

Defendant.

September 12, 1990

FOR PUBLICATION

No. 119916

Before: Murphy, P.J., and Holbrook, Jr., and Maher, JJ.

PER CURIAM.

Plaintiff Auto-Owners Insurance Company appeals the trial court's order granting defendant Autodie Corporation Employee Benefit Plan (Autodie) a summary disposition. Plaintiff's action was brought to recoup medical expenses paid by plaintiff on behalf of Chad Alan Lake under his no-fault insurance policy. Plaintiff sought to recoup these medical expenses from Autodie under its health insurance policy.

Chad Alan Lake, a minor, was injured in a motor vehicle accident at a time when he was insured by Auto-Owners under its no-fault insurance policy. This policy contained a coordinated benefits clause by which Auto-Owners was liable for no-fault personal injury protection benefits to the extent that those were in excess of coverage for expenses provided under any individual or group health coverage plan. Autodie had a health care benefit plan providing medical expense coverage to Mr. Lake.

However, the Autodie plan contained a clause which provided as follows:

> Michigan No Fault Exclusion
>
> Benefits are not payable under this Plan for injuries received in an accident involving a car or other motor vehicle.

The trial court determined that the Autodie policy validly excluded liability of Autodie for Mr. Lake's medical expenses from the motor vehicle accident.

The law is clear that when the no-fault insurance policy and a health insurance policy contain coordinated benefits clauses, the intent of the no-fault insurance act, expressed in MCL 500.3109a; MSA 24.13109(1), mandates that the health insurance carrier will be primarily liable for the insured's medical expenses resulting from injuries suffered in a motor vehicle accident. Federal Kemper Ins Co, Inc v Health Ins Administration, Inc, 424 Mich 537; 383 NW2d 590 (1986). However, the plan at issue does not attempt to coordinate benefits under the above-quoted language. Rather, the Autodie policy explicitly exclude coverage for injuries received in a motor vehicle accident in Michigan. There is no possibility of duplicative recovery nor is there a conflict between this policy language and the coordinated benefit language of the auto owner's policy. The wording of the Autodie policy is similar to an exclusion clause determined to be valid in Transamerica Ins Co of North America v Peerless Industries, 698 F Supp 1350, 1355-1356 (WD Mich, 1988).

We conclude that the trial court did not err when it determined that the exclusion clause of the Autodie policy validly excluded liability for medical expenses incurred by Mr. Lake from the motor vehicle accident in Michigan. In view of this holding, remaining issues raised by plaintiff need not be addressed.

Affirmed.

/s/ William B. Murphy
/s/ Donald E. Holbrook, Jr.
/s/ Richard M. Maher