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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALLSTATE INSURANCE COMPANY,

Plaintiff,

VS.

LABORERS' METROPOLITAN DETROIT HEALTH CARE FUND and JOHN T. LEVITT,

Defendants.
_____/

Civil Action No. 90-CV-70221-DT

Hon. Gerald E. Rosen

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

AT A SESSION of said Court held in the Federal Building, Detroit, Michigan on OCT 30 1990

PRESENT: HONORABLE GERALD E. ROSEN
United States District Court

This matter is presently before the Court on the cross-motions of Plaintiff, Allstate Insurance Company ("Allstate"), and Defendant, Laborers' Metropolitan Detroit Health Care Fund ("Laborers' Fund"), for summary judgment. Pursuant to Local Rule 17(l)(2), the Court hereby orders the submission of these motions on the briefs filed the parties, the Court finding that hearing and oral argument is not necessary to the Court's resolution of the motions.

FACTS:

The facts here are undisputed. Allstate brought the instant action originally in the State of Michigan District Court for the

39th Judicial District.[1] Allstate seeks a declaratory judgment determining that it is entitled to recoupment from Defendant Laborers' Fund for medical expenses it has already paid and will pay in the future to and for the benefit of Defendant John Levitt arising out of an automobile accident that occurred on July 11, 1988, in which Levitt was injured.

Allstate is Levitt's Michigan no-fault automobile insurance provider. Defendant Laborers' Fund is a employee welfare benefit plan, within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. Section 1002(1), that provides health care coverage to Levitt under his employee benefits plan.

The issue in this case is whether Laborers' Fund is liable to reimburse Allstate for some or all of the medical expenses Allstate paid to Levitt on account of the car accident.

Both Levitt's insurance policy with Allstate and his employee benefits plan with Laborers' Fund anticipate that Levitt's medical expenses will be payable by other insurance. Allstate's policy contains the following coordination of benefits language:

> **COORDINATION OF BENEFITS**
>
> If medical expense benefits are identified as excess under Coverage VA in the declarations, Allstate shall not be liable to the extent that any elements of loss covered under Personal Protection Insurance allowable expenses benefits are paid, payable or required to be provided to or on behalf of the named or any relative under the provisions of any valid and collectible
>
> (a) individual, blanket or group accident or

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[1] As a basis for state district court jurisdiction, the Plaintiff's Complaint for Declaratory Relief alleges that the amount in controversy is less than $10,000.

hospitalization insurance,

(b) medical or surgical reimbursement plan,

(c) workmen's compensation law, or similar disability, or any state or federal government laws, or

(d) automobile or premises insurance affording medical expense benefits.

(Allstate Policy, Exhibit 1 to Plaintiff's Brief, p. 6).

Levitt's employee benefits plan with Laborers' Fund contains the following language:

EXCEPTIONS AND LIMITATIONS

No benefits, other than Death and Accidental Death and Dismemberment Benefits, are payable for:

* * *

5. Any loss resulting from automobile or vehicular-related accidents where Michigan No-Fault Insurance would normally cover such loss.

* * *

(Laborers' Fund Summary Plan, Exhibit 2 to Laborers' Fund Brief, p. 31-H).

GENERAL PROVISIONS

* * *

As was pointed out in the Exclusion Section of this booklet, the Fund excludes coverage for any claim arising out of an auto or other vehicular accident. "Vehicle" includes all usual forms of transportation on public highways, including vans, pick-up trucks, etc., which require coverage under the Michigan No-Fault Insurance Law. Consequently, all participants are expected to cover themselves and the Eligible Employees for auto and other vehicular-related accident claims under their individual No-Fault Insurance Policies.

(Laborers' Fund Summary Plan, pp. 35-36-H).

On January 26, 1990, the Defendants filed their joint Notice

of Removal under 28 U.S.C. Sections 1441 and 1446, claiming that Allstate's action is preempted by ERISA. Allstate brought a motion to remand the case to state court, denying ERISA preemption. In its April 17, 1990 Memorandum Opinion and Order, this Court's predecessor, the Honorable Richard F. Suhrheinrich, denied Allstate's motion to remand, at least implicitly accepting Laborers' Fund's ERISA preemption argument:

> In Liberty Mutual Insurance Group v. Iron Workers Health Fund of Eastern Michigan, 879 F.2d 1384 (6th Cir. 1989), the Sixth Circuit held, notwithstanding Northern Group, that the application of Section 3109a to an ERISA plan **with an exclusion provision virtually identical to the one at issue was preempted since it would have the effect of requiring the ERISA plan to provide a benefit which would not otherwise be provided to employees; namely, coverage for injuries incurred as the result of an automobile accident**. Liberty Mutual, 879 F.2d at 1388. Thus, it is clear from Liberty Mutual that a federal question is raised in this case, albeit as a defense.

(April 17, 1990 Memorandum Opinion and Order, p. 6)(emphasis added).

DISCUSSION:

This very same ERISA preemption issue is at the heart of Laborers' Fund's motion for summary judgment. In a nutshell, Laborers' Fund contends that the above-quoted language in its employee benefits plan specifically excludes coverage for medical expenses incurred by its covered employee, John Levitt, as a result of any automobile accident. To the extent that state law, specifically M.C.L. Section 500.3109a,[2] as interpreted by the

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[2] M.C.L. Section 500.3109a reads as follows:

500.3109a. Deductibles and exclusions relating to other health and accident coverage

Michigan Supreme Court in Federal Kemper Insurance Co. V. Health Insurance Administration, Inc., 424 Mich. 537, 546, 383 N.W.2d 590, 594 (1986), would void the express exclusion provision in Laborers' Fund's employee benefits plan, such state law is preempted by ERISA, 29 U.S.C. Section 1144, and the plan's exclusion provisions must prevail. Liberty Mutual Insurance Group v. Iron Workers Health Fund, 879 F.2d 1384, 1387-1388 (6th Cir. 1989).

Allstate does not take issue with the general thrust of Laborers' Fund's argument. However, Allstate does dispute that the provisions of the employee benefit plan in this case constitute the same type of "exclusion of coverage language" that was at issue in the Liberty Mutual case. Instead, Allstate argues:

> The coverage provided in the Laborers' Metropolitan Detroit Health Care fund explicitly refers to Michigan no-fault coverage. The coverage is conditioned on the existence of Michigan no-fault coverage. Therefore, the coverage provided by the Fund coordinates with the required no-fault auto insurance coverage provided by Allstate.

(Plaintiff's Brief, p. 8)(emphasis added).

Thus, Allstate equates the language in the plan with the "coordination of benefits" provision in its own insurance policy.

> Sec. 3109a. An insurer providing personal protection insurance 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.
>
> M.C.L. Section 500.3109.

As Allstate reads the employee benefits plan, the plan purports to cover Levitt's medical expenses caused by an automobile accident to the extent that the same are not covered by Levitt's no-fault automobile insurance policy. Since the employee benefits plan does not entirely exclude coverage for such medical expenses, the Plaintiff argues, this case is more analogous to the Sixth Circuit's decision in Northern Group Services v. Auto Owners Ins. Co., 833 F.2d 85 (6th Cir. 1987), in which the Sixth Circuit held that ERISA does not preempt M.C.L. Section 500.3109a to the extent that Section 500.3109a voids a "coordination of benefits" provision in an employee benefits plan, than to the decision in Liberty Mutual.

The Court is persuaded that Allstate misconstrues the exclusion provisions of the plan in the instant case. The operative provision of the plan explicitly provides as follows:

> **EXCEPTIONS AND LIMITATIONS**
>
> No benefits, other than Death and Accidental Death and Dismemberment Benefits, are payable for:
>
> * * *
>
> 5. Any loss resulting from automobile or vehicular-related accidents where Michigan No-Fault Insurance would normally cover such loss.
>
> * * *

(Laborers' Fund Summary Plan, Exhibit 2 to Laborers' Fund Brief, p. 31-H).

Contrary to Allstate's interpretation of this provision, the Court finds that the emphasized portion clearly does not condition coverage on the actual existence of no-fault insurance coverage.

If this effect were intended, the contract provision would simply have stated, "Any loss resulting from automobile or vehicular-related accidents where Michigan No-Fault Insurance covers such loss." The plain meaning of the language that actually appears in the contract is that losses "normally covered" by no-fault insurance are not covered by the plan, whether or not a particular employee is actually covered by no-fault insurance.

Any doubt as to the intent of this language is removed by the language of the plan's "General Provisions":

GENERAL PROVISIONS

* * *

> As was pointed out in the Exclusion Section of this booklet, the Fund excludes coverage for any claim arising out of an auto or other vehicular accident. . . . Consequently, all participants are expected to cover themselves and the Eligible Employees for auto and other vehicular-related accident claims under their individual No-Fault Insurance Policies.

(Laborers' Fund Summary Plan, pp. 35-36-H).

This Court interprets the plan provision as a true "exclusion" provision. The Sixth Circuit held, in Liberty Mutual, that ERISA preempts any state law attempts to nullify such an exclusion provision and to enlarge the coverage of a contractual employee benefits plan:

> It would appear at first blush that Northern Group Services requires us to hold in this case that Section 3109a is not preempted by ERISA. However, such a ruling would ignore the very different effect of the application of Section 3109a to the "other insurance" coverage provision contained in the benefit plan considered by the Northern Group panel and, under our assumption, 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 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. It would require the ERISA plan to provide a benefit which would not otherwise be provided to employees: coverage for injuries incurred as the result of an automobile accident. . . .
>
> We hold that even if Michigan law requires this court to disregard the automobile accident exclusion set forth in the Fund's health and accident policy, that state law is preempted.

Liberty Mutual, 879 F.2d, at 1387-1388 (emphasis added).

This Court's conclusion, in the instant case, that the employee benefits plan provision excludes coverage for automobile-related medical expenses, even in the absence of actual no-fault coverage, brings the instant case squarely within the Sixth Circuit's holding in Liberty Mutual. Accordingly, ERISA preempts any state law attempt to nullify the exclusion provision in the Laborers' Fund's plan, and the Court is required to give effect to the plan's exclusion provision.

For this reason, Allstate is not entitled to reimbursement from Defendant Laborers' Fund for the medical expenses that it has already and will, in the future, pay to Levitt on account of the July 11, 1988 automobile accident, and the Court will grant summary judgment in favor of the Defendants.

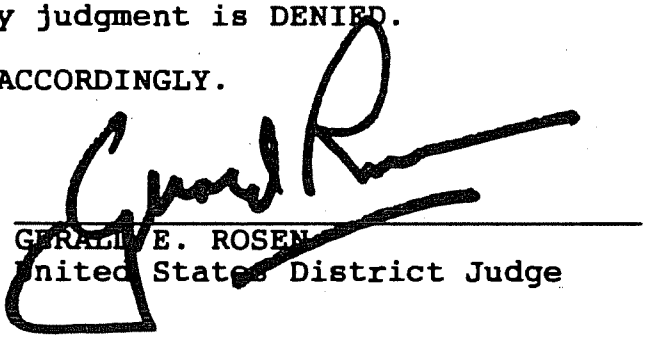
ORDER:

For the reasons set forth herein, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant's motion for summary judgment is GRANTED; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff's motion for summary judgment is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.



GERALD E. ROSEN
United States District Judge

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