

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FARM BUREAU INSURANCE COMPANY,
Subrogee of Marjorie Clark

Plaintiff,

v.

Case No. 1:90-cv-609

RISK CONTROL, INC., and
ASSOCIATED BUILDERS & CONTRACTORS,
INC., of MICHIGAN, jointly and
severally,

HON. ROBERT HOLMES BELL

Defendants.

MEMORANDUM OPINION AND ORDER

I.

This is a subrogation action brought by plaintiff seeking reimbursement of medical expenses paid under its no-fault automobile insurance policy.

The underlying facts are essentially undisputed. On August 4, 1984, Marjorie Clark was injured in an automobile accident. At the time of the accident, Ms. Clark was insured under a no-fault automobile insurance policy with Farm Bureau Insurance Company and under a health benefit plan through her husband's employer, Associated Builders and Contractors ("ABC"). Both insurance plans contained coordinated benefits provisions, limiting liability under the plans to the extent of existing collateral insurance coverage.

Subsequently, Farm Bureau paid \$74,544.32 in medical expenses on behalf of Ms. Clark for injuries arising out of her automobile

accident. Farm Bureau then sought reimbursement from Risk Control, the administrator of ABC's health benefit plan. Risk Control denied liability, based upon the existence of coverage under Farm Bureau's no-fault policy.

On June 22, 1990, Farm Bureau, as the subrogee of Marjorie Clark, filed suit against Risk Control in the Kent County Circuit Court, seeking reimbursement and a declaration that defendants are liable for Ms. Clark's future medical expenses. Subsequently, Risk Control removed the action to this Court.¹

Presently before the Court are the parties' cross-motions for summary judgment.

II.

Because defendants do not dispute primary liability under the Michigan Supreme Court's ruling in Federal Kemper Ins. Co. v. Health Administration, 424 Mich. 537 (1986), the sole question for this Court's resolution in deciding the parties' cross-motions is the enforceability of the 3-year limitations provision contained in ABC's employee health benefit plan.

ABC's employee health benefit plan requires that legal actions to recover benefits under the plan must be brought within "three years after the time written proof of loss is required to be furnished." The parties do not dispute that Ms. Clark was required

¹This Court's jurisdiction is founded upon 28 U.S.C. § 1331 in that defendants' benefit plan is governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq.

to submit written proof of her losses no later than November 4, 1984 - 90 days after the date of her accident. Plaintiff initially filed its claim in June, 1990.

In moving for summary judgment, defendants argue plaintiff's subrogated action is barred because suit was not filed within the 3-year time period required under the benefit plan.

Plaintiff argues that this suit is governed by the government's six-year period of limitations relating to contract actions under M.C.L. 600.5807(8); M.S.A. 27A.5807(8).

Plaintiff suggests this Court has previously ruled, in Transamerica Insurance Co. v. Peerless Industries (MASCO), 698 F.Supp. 1350 (1988), that a six-year period of limitations controls a no-fault carrier's subrogation action to recover benefits under an employee health benefit plan. In Transamerica, this Court determined that the one-year period of limitations proscribed by Michigan's no-fault act did not govern a subrogation action to enforce an insured's right to benefits under a health insurance plan. Id. at 1355. However, in Transamerica, unlike the present case, this Court was not presented with an express, contractual limitations provision.

In the instant case the question squarely before this Court is whether the contractual limitation provision controls and bars plaintiff's claim. This Court concludes that it does.

Under Michigan law, a contractual limitations provision contained in an insurance policy controls all "actions on the

policy", to enforce an insured's rights under the policy. See Hearn v. Rickenbacker, 428 Mich. 32 (1987) [addressing whether tort claims are "actions on the policy", and, thus controlled by the statutory period of limitations rather than the contractual limitations provision.] Here, plaintiff's subrogation claim arose solely from Mrs. Clark's rights to benefits under her husband's health benefit plan. Therefore, the contractual limitations provision governs plaintiff's action, and the action is time barred. Id., p.36-37.

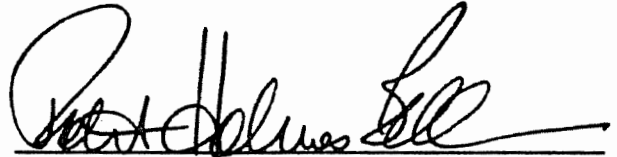
Plaintiff also insists that defendants should be estopped from enforcing the limitations provision contained in the plan because defendant initially denied benefits under an escape provision which was not part of ABC's employee health benefit plan. Plaintiff asserts that it was not until after suit was filed that defendants represented a denial of coverage based upon the excess coordination provision contained in the plan. However, the principles of estoppel are applied only where the defendant's actions have in some manner caused the plaintiff not to commence suit. Compton v. Michigan Millers Ins. Co., 150 Mich. App. 454, 458 (1986). Here, plaintiff cannot say that defendants actions induced it to refrain from bringing its action because it was not until after filing suit that plaintiff learned defendants asserted grounds for denial of coverage other than originally asserted.

III.

For the foregoing reason, the Court hereby GRANTS defendants' motion for summary judgment, DENIES plaintiff motion for summary judgment and DISMISSES plaintiff's complaint.

IT IS SO ORDERED.

Dated: March 1, 1991



ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE