

S T A T E O F M I C H I G A N
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKOGEE

* * * * *

GREAT LAKES AMERICAN
LIFE INSURANCE COMPANY,

Plaintiff,

vs.

File No. 90-25850-CK

TRANSAMERICA INSURANCE
CORPORATION, GEORGE L. DEAN
NORMA R. DEAN and JULIE K.
DEAN,

Defendants.

/

* * * * *

OPINION

Plaintiff, Great Lakes American Life Insurance Company, files suit against defendants seeking a declaratory judgment confirming its subrogation rights against defendants for health insurance benefits paid by plaintiff for injuries suffered by defendants Norma Dean and Julie Dean arising out of an automobile accident. At the time of the accident plaintiff provided health insurance coverage for defendant Deans. Defendant Transamerica had issued a policy of automobile no-fault insurance which provided medical benefits to defendant Deans under a coordinated benefits provision. Plaintiff has admitted its primary liability for payment of medical benefits to the Deans, but asserts that its contractual subrogation right permits it to obtain reimbursement of benefits received by the Deans from any third parties arising out of the automobile accident. Plaintiff claims that

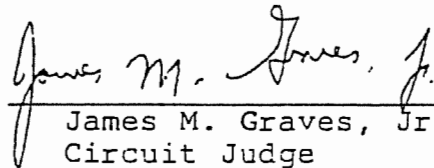
the Deans should reimburse plaintiff from the \$50,000.00 they received for non-economic losses from the at-fault driver, and that Transamerica should be required to reimburse the Deans for the sums they paid to plaintiff. The Deans filed a cross-complaint against their no-fault insurer, Transamerica, averring that if plaintiff should prevail in its claim, the Deans should be reimbursed by Transamerica.

Plaintiff and the Deans move the Court for summary disposition pursuant to MCR 2.116, and defendant Transamerica moves the Court for summary disposition pursuant to MCR 2.116 (C) (10). Based upon the submitted stipulation of facts, the Court assumes that all three motions are filed under Section (10) of the rule.

After a review of the record and briefs by the parties, the Court denies plaintiff's motion for summary disposition and grants defendant Deans' and defendant Transamerica's motions for summary disposition. Federal Kemper v Health Ins, 424 Mich 537 (1986) clearly holds that when a no-fault auto insurer issues a policy with a coordination of benefits clause authorized by MCL 500.3109 (a), MSA 24.13109 (1), the health insurance carrier is primarily liable for payment of the insured's medical expenses for injuries arising out of the automobile accident. Plaintiff cannot by contract effectively thrust the primary liability upon the no-fault insurer and contractually nullify Section 3109 (a) of the No-Fault Act as well as the Kemper holding. Foremost Life Ins Co v Waters, 415 Mich 303 (1982), the case primarily relied upon by plaintiff, was issued prior to Kemper, supra, and did not deal with Section 3109 (a) of the No-Fault Act nor the issue of

priority between health insurers and no-fault insurers. To the extent that there may be a partial conflict between Foremost and Kemper, the later Kemper holding impliedly overrules any area of the Foremost holding with which it might be in conflict. Sibley v DAIE, 431 Mich 164 (1988) construed Section 3109 (1) of the No-Fault Act and provides no guidance or precedent for the issue in the instant case. In regard to plaintiff's public policy argument, the Court notes that the public policy regarding these issues was summarized in Kemper, supra, in a manner contrary to plaintiff's position. Finally, the Court notes that it agrees with the logic and rationale of the Hon. David Soet's decision in Kent County Circuit Court Case No. 89-64911-CK, Great Lakes American Life Ins Co v Citizens Insurance Co and Cruz Paiz.

Dated this 15 day of August, 1990.


James M. Graves, Jr.,
Circuit Judge

cc: John B. Farrell
Attorney for Plaintiff
✓ Jennie Boldish Bryan
Attorney for Deft. Transamerica
David M. Wells
Attorney for Defts. Dean