UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FARMERS INSURANCE EXCHANGE, a California Inter-insurance exchange,

Plaintiff,

v.

CENTRAL STATES, SOUTHEAST & SOUTHWEST AREAS HEALTH AND WELFARE FUND AND RICHARD WALCZAK,

Defendants.

Civil Action No. 90-CV-73374-DT

HON. BERNARD A. FRIEDMAN

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

This matter is presently before the court on cross motions for summary judgment. Defendants filed their motion on May 24, 1991, and plaintiff filed its motion, along with its response to defendants' motion, on June 28, 1991. Defendants have also filed a response and a reply. Pursuant to Local Rule 17(l)(2) of the United States District Court for the Eastern District of Michigan, the court shall decide the motions without oral hearing.

This case involves conflicting coordination of benefits provisions related to no-fault insurance coverage. It originated with an automobile accident in which Richard Walczak was injured. Mr. Walczak had no fault personal injury protection automobile insurance through plaintiff Farmers Insurance Exchange ("Farmers"), which paid benefits on his behalf. He also had no fault coverage

through defendant Central States. The Central States contract contained a coordination of benefits clause stating that Central States would only provide coverage to Mr. Walczak for personal injury protection to the extent that benefits were in excess of the insurance provided under Farmers no fault policy. Mr. Walczak's policy under Farmers contained a similar clause, making it secondary to Central States.

On October 11, 1990, Farmers filed a complaint in state court seeking declaratory relief against Central States, relying upon § 3109(a) of the Michigan No-Fault Act. Defendants timely removed the case to this court. On November 23, 1990, defendants filed their answer claiming ERISA preemption as one of their affirmative defenses. Pursuant to ERISA, defendants also filed a counterclaim seeking judgment for all amounts paid by Central States on behalf of other Central States participants who also were insured by Farmers in circumstances where Farmers was alleged to be prime.

Central States' counterclaim alleges that it is a Taft-Hartley Trust subject to regulation under ERISA. It alleges further that Central States is a "self-funded" plan, as that term is used in § 3(1) of ERISA, 29 U.S.C. § 1002(1). Plaintiff argues that Central States is not self-funded inasmuch as until 1989, 25% of a life insurance benefit was insured by an outside insurer. Central States responds that this fact has no bearing on whether it is self-funded for ERISA preemption purposes related to Michigan's No-Fault Act, because the coordination of benefits

provision has nothing to do with life insurance, but only involves medical and other similar benefits. In support of this argument, it submits the deposition testimony Albert Nelson, Fund Director of Benefits, who indicates that Central States is completely self-funded for the purposes of preemption of the Michigan No-Fault Act. Additionally, Central States submits the report and recommendation of Magistrate/Judge Michael R. Merz of the Western District of Ohio, containing a finding that Central States is a self-funded plan.

Although plaintiff purports to raise a genuine factual dispute as to whether Central States is a self-funded plan under ERISA, the court is persuaded by the magistrate's ruling and the affidavits submitted by Central States, and therefore finds that there is no genuine dispute as to this issue. Accordingly, the court finds that Central States is a self-funded plan under ERISA for the purposes of resolving this motion.

This case presents nearly identical factual and legal issues as were raised and addressed by this court in its recent decision in Automobile Club Insurance Association v. Health and Welfare Plans, No. 89-CV-72264. The court believes that the rule of law stated in that case should be applied in the instant case.

The relevant precedent for both decisions is the recent Supreme Court case of FMC Corp. v. Holliday, 111 S.Ct. 403 (1990). The Court in FMC held that a self-funded ERISA plan may not be regulated by state laws purporting to regulate insurance. In FMC, a self-funded plan challenged whether a Pennsylvania law

prohibiting any plan from seeking subrogation to a beneficiary's recovery from a third party was applicable to it under ERISA. The Court determined that the Pennsylvania statute fell within the broad scope of ERISA's preemption clause inasmuch as it "related to" an employee benefit plan. Id., 111 S. Ct. at 408. While the statute would have been "saved" by the savings clause because it regulates insurance, it was not saved as to self-insured plans because the "deemer" clause provides that an ERISA plan shall not be deemed an insurance company for purposes of a state law regulating insurance. Id., 111 S. Ct. at 409. The Court went on to state that "[s]tate laws that directly regulate insurance are 'saved' but do not reach self-funded employee benefit plans because the plans may not be deemed to be insurance companies, other insurers, or engaged in the business of insurance for purposes of such state laws. Id.

As this court found in Health and Welfare Plans, the decision in FMC effectively overruled the Sixth Circuit's position, as articulated in Northern Group Services, Inc. v. Auto Owners Insurance Co., 833 F.2d 85, 91-94, cert. denied, 486 U.S. 1017 (1988). In Northern Group Services, the Sixth Circuit held that self-funded plans may, in some instances, be regulated by state laws regulating insurance. The Court in FMC reached precisely the opposite conclusion.

Under FMC, defendants argue that the ERISA provision wins out, that is, it preempts the provision under Michigan state law. Plaintiff argues that the two provisions effectively cancel each

other out, and the court must look to state law principles or to federal common law to determine the proper result.

Plaintiff's argument is unpersuasive for the simple reason that the two provisions in question do not have equal footing in this matter. One provision is under ERISA, and the other is under state law. (If both were ERISA provisions, plaintiff's argument would be more compelling). Plaintiff refers to several cases standing for the proposition that where there are conflicting coordination of benefits provisions, courts must create federal common law by looking to state laws for guidance. Again, this argument is unavailing, inasmuch as the two provisions in question do not occupy the same status. See, e.g., Northeast Dep't ILGWU v. Teamsters Local 299, 764 F. 2d 147 (3d Cir. 1985) (involving conflicting provisions in two ERISA plans).

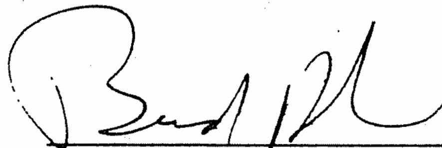
The ERISA provision in question, 29 U.S.C. § 1132 (a)(i)(B), entitles plaintiff to recover only those benefits due to him under the terms of his plan. The coordination of benefits provision in defendants' plan provides a benefit which is secondary to that provided by plaintiff's no-fault policy. Plaintiff therefore has no right to recover benefits under Central States' plan unless it can be shown that the Trustees of the Central States acted in an arbitrary and capricious manner in establishing a coordination of benefits provision against no-fault insurance carriers. Since there is neither evidence nor any allegation of such misconduct, the court finds that the Trustees of Central States did not act in an arbitrary or capricious manner.

Inasmuch as the court has determined, as a matter of law, that ERISA preempts plaintiff's state law claims, summary judgment in defendants' favor is appropriate on the basis of ERISA preemption.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion for summary judgment is granted.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment is denied.



BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Dated: JUL 23 1990