

STATE OF MICHIGAN  
COURT OF APPEALS

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AUTO CLUB INSURANCE ASSOCIATION,

January 6, 1992

Plaintiff-Appellee,

v

No. 126174

PENTWATER WIRE PRODUCTS, INC.  
SELF-FUNDED EMPLOYEE HEALTH BENEFIT PLAN,

Defendant-Appellant.

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Before: Danhof, C.J., and Doctoroff and Brennan, JJ.

PER CURIAM.

Alice Guetzka, whose husband was employed by Pentwater Wire Products, Inc., was seriously injured in an automobile accident. Pentwater provides health benefits for its employees and their dependents through a self-funded health and accident benefit plan. Plaintiff, Guetzka's no-fault insurance carrier, paid the medical expenses incurred as a result of the accident. Plaintiff thereafter sought reimbursement from defendant. Defendant denied the claim and this action was filed. The trial court granted plaintiff's motion for summary disposition. Defendant appeals as of right from the order granting summary disposition to plaintiff and from the denial of its motion for new trial and relief from judgment. We find defendant's claim that §3109a of the no-fault act, MCL 500.3109a; MSA 24.13109(1), is preempted by the Employee Retirement Insurance Security Act ("ERISA"), 29 USC 1001 *et seq.*, dispositive and reverse.

This case is controlled by Auto Club Ins Ass'n v Frederick & Herrud, Inc., \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 135974, rel'd 10/8/91), which held that state regulation of self-funded employee benefit plans is preempted by ERISA. Therefore, §3109a is preempted by ERISA. The Court also rejected the argument that the purchase of stop-loss insurance transforms a benefit plan into an insured plan for purposes of ERISA. Applying the Court's ruling to this case, we hold that plaintiff's claim is barred.

Plaintiff's argument that its claim survives application of ERISA preemption is not properly raised on appeal because plaintiff did not file a cross-appeal. MCR 7.207; Bhama v Bhama, 169 Mich App 73, 83; 425 NW2d 733 (1988). In any event, we would reject plaintiff's argument.

Reversed and remanded to the circuit court for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Robert J. Danhof  
/s/ Martin M. Doctoroff  
/s/ Thomas J. Brennan