

STATE OF MICHIGAN  
COURT OF APPEALS

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AUTO CLUB INSURANCE ASSOCIATION,

March 4, 1993

Plaintiff-Appellee,

v

No. 139620

WHITE & WHITE, INC.,

Defendant-Appellant.

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Before: Wahls, P.J., and Michael J. Kelly and Connor, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's summary judgment. We vacate the judgment and remand for further proceedings.

An employee of defendant's was seriously injured in an automobile accident in 1984. The employee had no-fault insurance with plaintiff, and the no-fault policy provided for coordination of benefits with the employee's health insurance. See MCL 500.3109a; MSA 24.13109(1). At the time, defendant's health insurance plan provided:

NO BENEFITS ARE PAYABLE UNDER THIS PLAN FOR INJURIES RECEIVED IN AN ACCIDENT INVOLVING A CAR OR OTHER MOTOR VEHICLE WHICH IS OWNED OR LEASED BY A COVERED PERSON OR ANY MEMBER OF HIS IMMEDIATE FAMILY OR INVOLVING ANY CAR OR OTHER MOTOR VEHICLE FOR WHICH THERE IS IN EFFECT A POLICY OF NO FAULT INSURANCE.

On the basis of this provision, defendant refused to pay for the employee's medical expenses. Plaintiff paid, and brought this action seeking reimbursement. The trial court granted defendant summary disposition, finding that plaintiff was entitled to reimbursement as a matter of law.

Under our Supreme Court's decision in Federal Kemper Ins Co v Health Ins Administration, Inc, 424 Mich 537; 383 NW2d 590 (1986), plaintiff might have been entitled to reimbursement according to Michigan law. But see Wolverine Mutual Ins Co v Rospatch Corp Employee Benefit Plan, 195 Mich App 302, 306-307; \_\_\_ NW2d \_\_\_ (1992). However, both parties now concede that because of the United States Supreme Court's decision in FMC Corp v Holliday, 498 US \_\_\_; 111 S Ct 403; 112 L Ed 2d 356 (1990), state law is preempted and resolution of this dispute is controlled by federal common law. See also Auto Club Ins Ass'n v Frederick & Herrud, Inc (On Remand), 191 Mich App 471; 479 NW2d 18 (1991). Whether plaintiff is entitled to reimbursement under federal law requires trial court analysis of federal precedent. See Auto Club Ins v Health and Welfare Plans, Inc, 961 F2d 588, 593-595 (CA 6, 1992). We therefore vacate the judgement of the trial court and remand for further proceedings in accordance with federal law.

Vacated and remanded. We do not retain jurisdiction.

/s/ Myron H. Wahls  
/s/ Michael J. Kelly  
/s/ Michael J. Connor