STATE OF MICHIGAN

COURT OF APPEALS

SHYRLE JAMES JOHNSTON and
JOHN DANIEL JOHNSTON,
by and through their conservators,
ROBERT and VALLERIE JOHNSTON, and
ROBERT and VALLERIE JOHNSTON,
jointly and individually,

Plaintiffs,

v

LINCOLN MUTUAL CASUALTY COMPANY,

Defendant-Appellant/
Cross-Appellee,

and

EAST JORDAN IRON WORKS, INC., and
EAST JORDAN IRON WORKS
EMPLOYEE BENEFIT PLAN,

Defendants-Appellees/
Cross-Appellants.

May 20, 1993

No. 134975

Before: Holbrook, Jr., and MacKenzie and Sawyer, JJ.

PER CURIAM.

Defendant Lincoln Mutual Casualty Company ("Lincoln") appeals as of right from an order granting summary disposition in favor of defendants East Jordan Iron Works and the Iron Works' Employee Benefit Plan ("The Plan"). East Jordan and The Plan cross-appeal. We affirm.

Plaintiffs Shyrle James Johnston and John Daniel Johnston were injured in a collision while passengers in a pickup truck owned by a third party. Their parents, plaintiffs Robert and Vallerie Johnston, incurred medical expenses as a result of the accident. Plaintiffs received $50,000 in settlement proceeds from the owner of the pickup truck. These proceeds covered only non-economic losses, however.

Defendant Lincoln is the Johnstons' no-fault insurer. The Johnstons' no-fault policy contained a coordination of benefits clause. As an East Jordan employee, Robert Johnston and his family were also protected by the East Jordan Iron Works Employee Benefit Plan, an employer-sponsored medical health plan. The Plan was established under and subject to the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 et seq., and paid benefits from contributions to The Plan made by the employer and plan sponsor, East Jordan. Plaintiffs sought payment of their medical expenses from both Lincoln and The Plan.

The trial court ordered any claims against The Plan dismissed with prejudice, effectively making Lincoln responsible for plaintiffs' medical expenses. On appeal Lincoln contends that under its no-fault policy's coordination of benefits clause, it should not bear such primary responsibility. Although for a different reason than that raised before the trial court, we are satisfied that the claims against The Plan were properly dismissed. We therefore decline to reverse. See Beeler v Michigan Racing Comm'r, 191 Mich App 498, 500; 478 NW2d 700 (1991) and Bonner v Chicago Title Ins Co, 194 Mich App 462, 472; 487 NW2d 807 (1992).

We believe that this case is controlled by Auto Club Ins Ass'n v Frederick & Herrud, Inc (On Remand), 191 Mich App 471; 479 NW2d 18 (1991), leave granted 441 Mich 878 (1992) and Wolverine Mutual Ins Co v Rospatch Corp Employee Benefit Plan, 195 Mich App 302; 489 NW2d 204 (1992), both of which held that ERISA's preemption clause as set forth at 29 USC § 1144(a) preempts the coordination of benefits under the state's no-fault act, where the health benefits provider is a self-funded employee welfare benefit plan administered pursuant to ERISA. The Plan is such a provider. Auto Club and Wolverine are binding on both this Court and the trial court pursuant to Administrative Order 1990-6, 436 Mich lxxxiv (1990); Administrative Order 1991-11, 439 Mich xlv (1992), and Administrative Order 1992-8, 441 Mich lii (1992). The fact that The Plan carried excess loss coverage does not alter this result. See Wolverine Mutual, supra, pp 307-308. See also FMC Corp v Holliday, 498 US ___; 111 S Ct 403; 112 L Ed 2d 356 (1990). Accordingly, we must conclude that the trial court reached the right result in dismissing the claims against East Jordan Iron Works and The Plan.

The above disposition makes it unnecessary to address the parties' remaining claims.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ David H. Sawyer