UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY LOPICCOLO,

Plaintiff,

vs.

AUTO CLUB INSURANCE ASSOCIATION and METROPOLITAN PROPERTY & CASUALTY INSURANCE COMPANY,

Defendants,

and

METROPOLITAN PROPERTY & CASUALTY INSURANCE COMPANY,

Third-Party Plaintiff,

vs.

MARYSVILLE PLASTICS CORPORATION,

Third-Party Defendant.

_____/

No. 93-CV-74601-DT
Hon. Gerald E. Rosen

OPINION AND ORDER REGARDING THIRD-PARTY CROSS-MOTIONS FOR SUMMARY JUDGMENT

At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on NOV 10 1994

PRESENT: Honorable Gerald E. Rosen
United States District Judge

I. INTRODUCTION

On May 7, 1992, Plaintiff Beverly Lopiccolo was involved in a car accident. Sometime in 1993, Plaintiff initiated a suit in St. Clair County Circuit Court against Defendants Auto Club Insurance Association and Metropolitan Property & Casualty Insurance Company ("Metropolitan") to pay for various medical expenses she incurred

as a result of the accident. On September 28, 1993, Metropolitan, Plaintiff's no-fault insurance carrier, filed a third-party complaint against Third-Party Defendant Marysville Plastics Corporation ("Marysville"), Plaintiff's employer. In that third-party complaint, Metropolitan sought a declaratory judgment that Marysville's self-funded ERISA health plan was primarily liable for past, present and future medical expenses incurred by Plaintiff as a result of her car accident.

Marysville filed a notice of removal of this action on October 29, 1993. In an order dated November 19, this Court ordered Marysville to show cause why this case should not be remanded to St. Clair County Circuit Court. Marysville did not respond to this order. On February 15, 1994, this Court vacated its show cause order, remanded the primary complaint to St. Clair County Circuit Court, and retained jurisdiction over the third-party complaint on the grounds that it stated a cause of action requiring interpretation of an ERISA plan. The Court further ordered the parties on March 29 to submit cross-motions for summary judgment no later than April 29.

Metropolitan filed its motion for summary judgment on April 15. In that motion, Metropolitan argued that the coverage liability for Mrs. Lopiccolo's medical expenses should be apportioned on a pro rata basis between it and Marysville. Marysville responded to this motion and filed its own motion for summary judgment on April 29. Marysville also supplemented its response and motion on May 2 with an affidavit and attached

exhibits. In its papers, Marysville contended that its plan's terms govern the extent of any liability it may have for Mrs. Lopiccolo's medical expenses.

After reviewing the papers filed by the parties, the Court conducted a hearing on the cross-motions for summary judgment on September 14, 1994. At the hearing, the Court indicated that, for the reasons set forth below, it was prepared to enter judgment for Marysville. Metropolitan's counsel, however, requested that this Court dismiss the case without prejudice pending the decision of the Sixth Circuit Court of Appeals on whether to order an en banc hearing of Auto Owners Ins. Co. v. Thorn Apple Valley, Inc., No. 93-1606, slip op. (6th Cir. August 1, 1994). The Court complied with this request, and entered an order dismissing the case without prejudice on September 22.

Counsel for Metropolitan informed the Court on October 11 that the en banc petition in Auto Owners was denied. Therefore, the Court is now prepared to enter a final order of dismissal with prejudice in this case. This opinion and order sets forth the basis for the Court's conclusion.

II. DISCUSSION

A. FACTUAL BACKGROUND.

The only relevant factual question is what do the Metropolitan insurance policy and the Marysville health plan say with respect to payment from other sources for medical expenses arising from car accidents. As pointed out by Marysville's counsel, Metropolitan has not provided to the Court a copy of the coordinated benefits

clause in its no-fault insurance policy on which it relies to try to shift primary liability to Marysville. Metropolitan only states that its no-fault policy "was issued on a coordinated basis pursuant to M.C.L. § 500.3109a." Metropolitan's Brief, p. 2 (emphasis in original). That statute, for its part, states: "An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured." M.C.L. § 500.3109a(1).

Both parties have, however, have submitted to the Court a copy of the relevant language in the Marysville plan, which states:

> Except as required by law, the plan is secondary to any no-fault automobile coverage. It is not intended to reduce the level of coverage that would otherwise be available through a no-fault automobile insurance policy nor does it intend to be primary in order to reduce the premiums or costs of no-fault automobile coverage.
>
> If you or a covered dependent incur covered expenses as a result of an automobile accident (either as a driver, passenger or pedestrian), the amount of covered expenses that the plan will pay is limited to:
>
> * any deductible under the automobile coverage, up to $300;
> * any copayment under the automobile coverage;
> * any expense properly excluded by the automobile coverage that is a covered expense; and
> * any expense that the plan is required to pay by law.
>
> If you are disabled and lose wages because of an automobile accident, your short term disability payments will be reduced by the amount of wage loss benefits you receive under any automobile insurance policy.

Metropolitan's Brief, Ex. A (emphasis added).

B. SUMMARY JUDGMENT FOR MARYSVILLE IS PROPER.

As noted above, Metropolitan has not made its insurance policy a part of the record despite the late stage of the case. However, the Court will not stand on this point as the basis for its decision to deny Metropolitan's motion and grant Marysville's cross-motion. Rather, the Court relies upon the recent Sixth Circuit decision rendered in Auto Owners Ins. Co. v. Thorn Apple Valley, Inc., supra, to reach this result.[1]

In Auto Owners, the Sixth Circuit confronted exactly the issue present in this case: whether a no-fault insurer relying upon M.C.L. § 500.3109a could impose pro rata liability for medical expenses arising from a car accident upon an ERISA plan whose terms explicitly renounced such coverage. The plan language that the ERISA fund relied upon in that case stated:

> In addition to benefits payable under this Plan, sometimes an employee or dependent is entitled to benefits for the same hospital or medical expenses under Group Fault or No-Fault Auto Insurance . . . or another group plan. Should this type of duplication occur, the insurance does not apply to any liability for losses covered by a primary, contributory, excess, secondary or any other coverage of any other basis by any other insurance company, under any other types of circumstances, particularly such benefits as may be payable under any type of coordinating policy with an automobile insurance carrier for first party benefits under M.C.L.A. 500.3109 et seq.

Auto Owners, slip op. at 3.

The Auto Owners court began its analysis by noting that it was

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[1]The Court should add that Auto Owners, supra, arrived at the same result reached by this Court in Lincoln Mut. Casualty Co. v. Lectron Prods., Inc. Employee Health Benefit Plan, 823 F. Supp. 1385 (E.D. Mich. 1993) (adopting, as modified, U.S. Magistrate Judge Virginia Morgan's report and recommendation).

well-settled Sixth Circuit law that ERISA preempts the application of state laws like M.C.L. § 500.3109a. The Sixth Circuit further stated that it has held that this fact alone does not end the inquiry; rather, federal courts must develop a federal common law rule to resolve the conflict between competing "coordination of benefits" or "other insurance" clauses which seek to shift some or all coverage liability for medical expenses arising from car accidents from no-fault insurers to ERISA plans. Auto Owners, slip op. at 6. See also Lincoln Mut. Casualty Co. v. Lectron Prods., Inc. Employee Benefit Plan, 970 F.2d 206, 211 (6th Cir. 1992).

The Auto Owners court then rejected the approach urged by the district court (and by Metropolitan in this case), namely, a pro rata distribution of coverage between the no-fault insurer and the ERISA plan. The court reasoned:

> The underlying purpose of ERISA is to protect the interests of participants in employee benefit plans and their beneficiaries." 29 U.S.C. § 1001(b); see also Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 113 (1989) (citing Shaw v. Delta Airlines, Inc., 463 U.S. 85, 90 (1983)). In our view, this directive means that Congress sought to guard qualified benefit plans from claims, such as that advanced by Auto Owners, which have been expressly disavowed by the plans.
>
> While we agree that both [coordination of benefits] clauses at issue are facially valid, we cannot accept the Seventh Circuit's conclusion that a "solomonic apportionment of liability" is appropriate. Winstead[v. Indiana Ins. Co., 855 F.2d 430, 434 (7th Cir.) (holding that no-fault insurer and ERISA plan should share equally in the coverage liability for medical expenses incurred as the result of a car accident), cert. denied, 488 U.S. 1030, 109 S. Ct. 839 (1989)]. Such a result may be, as Winstead suggests, "eminently fair," but it accords insufficient weight to the policy considerations behind the enactment of ERISA. Our situation is unlike the one where the competition is between [coordination of benefits] clauses in nonqualifying private insurance

> policies. There, the playing field is level; here it is not, since the [ERISA plan] clause is bolstered by the preemptive effect of ERISA.
>
> Accordingly, we conclude that the terms of the [ERISA plan], including its coordination of benefits clause, must be given full effect in order to comply with a primary goal of ERISA, which is to safeguard the financial integrity of qualified plans by shielding them from unanticipated claims.

Auto Owners, slip op. at 7-8.

Auto Owners, then, mandates entry of summary judgment in favor of Marysville. Its health plan language, like that in Auto Owners, expressly limits its coverage for medical expenses incurred as a result of a car accident when the participant or beneficiary has no-fault insurance, regardless of M.C.L. § 500.3109a or the terms of the no-fault insurance policy. Because Auto Owners expressly reversed or rejected all of the cases upon which Metropolitan relies to impose pro rata liability on Marysville's ERISA plan for Mrs. Lopiccolo's medical expenses as a result of her car accident, this Court must grant summary judgment to Marysville.

III. CONCLUSION

For the foregoing reasons,

NOW, THEREFORE, IT IS HEREBY ORDERED that Metropolitan's motion for summary judgment is DENIED, and Marysville's cross-motion for summary judgment is GRANTED. Marysville's liability for Mrs. Lopiccolo's medical expenses arising from her car accident is limited to the coverage provided by the coordination of benefits clause found in its plan documents.

Let Judgment be entered accordingly.

Gerald E. Rosen
U.S. District Court Judge