UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAMPBELL SOUP COMPANY,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.
_____/

File No. 4:95-CV-38

HON. ROBERT HOLMES BELL

O P I N I O N

Plaintiff Campbell Soup Company filed this subrogation action against Defendant Allstate Insurance Company seeking reimbursement for medical expenses paid by the Campbell Group Health Benefits Plan on behalf of an employee's dependent for injuries sustained in a motor vehicle accident. The matter is before the Court on the parties' cross-motions for summary judgment.

I.

For purposes of these motions the Court will accept the facts alleged in Plaintiff's first amended complaint. Plaintiff is the Plan Administrator of a self-funded Health Benefits Plan issued by Campbell Soup Company. The Plan includes a comprehensive major medical plan.

Manuel Estrada was an employee of Camsco Produce Company, a subsidiary of Campbell Soup Company. He was a member of the Campbell Group Health Benefits Plan (the "Plan"), and his daughter Teresa Estrada was a covered dependant under the Plan.

On August 26, 1990, Teresa Estrada was a passenger in a vehicle driven by her brother. The vehicle was owned by Manuel Estrada, who was insured by Defendant Allstate under a Michigan no-fault automobile insurance policy. The vehicle caught fire and Teresa received third degree burns. The Campbell Plan paid medical benefits totaling $26,176.11 on her behalf.

By letter dated December 12, 1990, Plaintiff Campbell requested reimbursement from Defendant Allstate for medical expenses paid. Defendant Allstate refused to pay, and Plaintiff initiated this suit for reimbursement on March 13, 1995.

II.

Defendant Allstate contends in its motion for summary judgment that Campbell's action is time barred by Allstate's contractual one year limitation period. In the alternative, Allstate contends that the Campbell Plan is primarily liable for the medical expenses pursuant to the coordination of benefits ("COB") provision contained in Allstate's policy.

Plaintiff Campbell contends in its cross-motion for summary judgment that because it is an ERISA policy, its own COB clause is controlling, and Allstate is primarily liable for the medical expenses arising out of the automobile accident.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In evaluating a motion for summary judgment the Court must look beyond the pleadings and assess the proof to

determine whether there is a genuine need for trial. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

For purposes of this motion the Court will assume that the action is timely and that the Plan is an ERISA plan entitled to the preemptive effect of ERISA. The focus of the Court's analysis will accordingly be on the issue of coordination of benefits.

III.

Michigan law requires no-fault insurers to offer their insureds a coordination of benefits option at a reduced rate which makes the no-fault coverage secondary to the insured's other health and accident insurance coverage. M.C.L. § 500.3109a; M.S.A. § 24.13109(1). Under Michigan law, when a no-fault insurance policy and a health insurance policy contain coordination provisions which conflict with each other, the health insurance is primarily liable for the insured's medical expenses arising out of an automobile accident. Federal Kemper Ins. Co. v. Health Ins. Admin., Inc., 424 Mich. 537, 551 (1986).

This rule of priority does not necessarily apply, however, where an ERISA policy is involved because ERISA preempts application of § 3109a of the Michigan no-fault act. Lincoln Mut. Casualty Co. v. Lectron Products, Inc. Employee Health Benefit Plan, 970 F.2d 206, 210 (6th Cir. 1992); Auto Club Ins. Assoc. v. Health & Welfare Plans, Inc., 961 F.2d 588, 592 (6th Cir. 1992). As the Michigan Supreme Court explained in Auto Club

Ins. Assoc. v. Frederick & Herrud, Inc., 443 Mich. 358, 505 N.W.2d 820 (1993), cert. denied, 114 S. Ct. 1300 (U.S. 1994), "an unambiguous COB clause in an ERISA health and welfare benefit plan must be given its plain meaning despite the existence of a similar clause in a no-fault policy because any conflict created by the requirements of M.C.L. 500.3109a; M.S.A. 24.13109(1) and this Court's interpretation of the statute would have the direct effect of dictating the terms of the ERISA plans." Id. at 389-90 (emphasis added).

In Auto Owners Ins. Co. v. Thorn Apple Valley, 31 F.3d 371 (6th Cir. 1994), cert. denied, 115 S. Ct. 1177 (U.S. 1995), the Sixth Circuit held that "when a traditional insurance policy and a qualified ERISA plan contain conflicting coordination of benefits clauses, the terms of the ERISA plan, including its COB clause, must be given full effect." Id. at 374. The Sixth Circuit reasoned that the ERISA Plan's COB clause should be given primary effect over the no-fault COB clause "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." Id. at 375.

The fact that ERISA preempts § 3109a, however, does not end this Court's inquiry. ERISA preemption does not render Allstate's COB clause void, nor does it necessarily mean that the Campbell Plan's terms prevail. See Thorn Apple, 31 F.3d at 374; Lincoln Mut., 970 F.2d at 211; Auto Club, 961 F.2d at 592-93. To resolve a conflict between competing COB clauses, the Court must apply federal common law. Thorn Apple, 31 F.3d at 374.

The Sixth Circuit noted in Thorn Apple that the underlying purpose of ERISA is to protect "the interests of participants in employee benefit plans and their beneficiaries." Id. at 375 (quoting 29 U.S.C. § 1001(b)). "In our view, this directive means that Congress sought to guard qualified benefit plans from claims . . . which have been expressly disavowed by the plans." Id. at 375.

With this directive in mind, the Court turns to a review of the language of the competing COB clauses to determine whether they are in fact in conflict and to determine whether the Campbell Plan has expressly disavowed coverage for medical expenses covered by a no-fault automobile insurance policy.

The Campbell Plan COB provision is directed to the situation where an insured is covered by more than one group health plan. The Campbell Plan provides:

> IF YOU ARE COVERED BY MORE THAN ONE GROUP PLAN
>
> (Coordination of Benefits)
>
> The purpose of the Comprehensive Medical Program, which provides broad extensive coverage for nearly all types of medical care and treatment, is to help you pay your medical bills. It is not intended that benefits exceed the medical expenses you incur. That is why a Coordination of Benefits feature is included in most benefit programs.
>
> If you or your spouse have other group coverage under another "Plan," as defined below, you will speed payment of your claim by providing all required information about other plans when you submit your claim. Space is provided for this information on your claim form along with a statement you must sign attesting to the accuracy of the information provided.

The term "Plan" means:

(a) group insurance plan if it is not an individual policy you have acquired on you own;

(b) health maintenance organization or hospital or medical service prepayment plan available through an employer, union or association;

(c) trusteed plan, union welfare plan, multiple employer plan, or employee benefit plan; or

(d) governmental program or a plan required by a statute, except Medicaid.

The Plan then provides general guidelines on how two or more plans coordinate with each other:

- A plan with no Coordination feature is primary.
- If you are the patient, your plan is primary. If your spouse is the patient, your spouse's plan is primary.
- If your child is the patient, the father's plan is primary, except that if the parents are separated or divorced:

  (i) the plan of the parent for whom a court decree has established financial responsibility will be primary; or

  (ii) in the absence of a court decree, the plan of the parent having custody of the child will be primary.

  If the child is also covered under a step-parent's plan, that plan will pay benefits before the plan of the parent covering the child other than on a primary basis.

- If you have two plans, one as an active employee and one as a retired employee from a previous employer, the plan covering you as an active employee is primary.

The Campbell Plan coordinates its coverage with other group medical plans. It specifically excludes from its definition of Plans "an individual policy you have acquired on you own." It does not purport to coordinate its coverage with insurance privately obtained, and it makes no reference to no-fault insurance or any other automobile insurance policy.

By contrast, the Allstate Coordination of Benefits provision very clearly coordinates its no-fault coverage with other health care coverage. The Allstate policy provides in pertinent part:

> Allstate shall not be liable to the extent that any elements of loss covered under Personal Protection Insurance allowable expenses benefits are paid, payable or required to be provided to or on behalf of the named insured or any relative under the provisions of any valid and collectible
>
> (a) individual, blanket or group accident disability or hospitalization insurance,
>
> (b) medical or surgical reimbursement plan,
>
> (c) workmen's compensation law, or similar disability law, or any state or federal government laws, or
>
> (d) automobile or premises insurance affording medical expense benefits.

In Tousignant v. Allstate Ins. Co., 444 Mich. 301, 310-11, 506 N.W.2d 844 (1993), the Michigan Supreme Court construed this language as follows:

> Allstate will not pay any expense that the health insurer has paid, will pay, or is required to pay or provide. Allstate will only pay the expense the health insurer is not obligated to pay for or provide.

Id. at 311. The Supreme Court further held that the Allstate policy language was a fair construction of the meaning of § 3109a

and fairly reflects what it means for a health insurer to be "primary." Id.

There is no question of fact that the Allstate coordination provision expressly makes the automobile insurance policy secondary to the Campbell Plan. The Campbell Plan, on the other hand, is ambiguous at best. It does not expressly disavow or subordinate its coverage to no-fault automobile insurance. It does not state that benefits will be coordinated for medical expenses incurred as a result of accidental bodily injury covered under an automobile insurance policy.

Because the Campbell Plan does not expressly subordinate itself to the no-fault policy, the Court finds no irreconcilable conflict in the COB clauses. The Court finds as a matter of law that the Allstate COB clause controls and that the Campbell Plan is the primary insurer for the medical costs at issue in this case. See Dayton Hudson Department Store Co. v. Auto-Owners Ins. Co., No. 5:94-CV-151 (W.D. Mich. Nov. 20, 1995)(Gibson, J.). Allstate is entitled to entry of judgment in its favor.

An order and judgment consistent with this opinion will be entered.

Date: January 9, 1996

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

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ORDER AND JUDGMENT

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Defendant Allstate Insurance Company's motion for summary judgment (Docket # 17) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff Campbell Soup Company's motion for summary judgment (Docket # 21) is **DENIED**.

IT IS FURTHER ORDERED that **JUDGMENT** is entered for Defendant Allstate Insurance Company.

IT IS FURTHER ORDERED that this action shall be **DISMISSED** in its entirety.

Date: January 9, 1996

Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE