

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREAT WEST LIFE & ANNUITY
INSURANCE COMPANY,

Plaintiff,

CASE NO. 95-72351

HONORABLE AVERN COHN

v.

TITAN INDEMNITY COMPANY,

Defendant.

MEMORANDUM AND ORDER

I. Introduction

This is an insurance coordination of benefits case. Plaintiff Great-West Life & Annuity Insurance Co. (Great-West) seeks both a declaratory judgment that defendant Titan Indemnity Co. (Titan) is primarily responsible for the payment of medical expenses incurred by Michelle Herbst (Herbst)¹, and reimbursement from Titan for payments Great-West has already made to Herbst. Titan counterclaims that Great-West is primarily responsible for the payments, and seeks reimbursement from Great-West for payments Titan has already made to Herbst.

Before the Court are cross-motions for summary judgment.

¹Herbst was covered by both a Titan insurance policy and a policy administered by Great-West when she was involved in a motor vehicle accident which resulted in large medical expenses. Herbst was initially named by Great-West as a co-defendant but was subsequently voluntarily dismissed.

The parties agree that length of coverage determines which party is primarily liable for Herbst's medical expenses but disagree over which party has provided coverage for the longest period. Titan argues that its coverage of Herbst began after she became covered by Great-West, and therefore Great-West is primarily liable. Great-West replies that Titan provided continuous coverage beginning before Great-West, so Titan is primarily liable.

For the reasons stated below, Great-West's motion for summary judgment will be granted and Titan's motion will be denied.

II. Facts

The facts are not in dispute.

On May 3, 1993, Titan issued Herbst Michigan no-fault automobile insurance policy No. 02-PA-000009330 (the '9330 policy). On May 15, 1993, Herbst became eligible under her employer's self-insured Health and Welfare Benefit Plan (HWBP), which provides payment for certain medical and health care expenses incurred by a participant. Great-West is the HWBP's third party administrator. On November 3, 1993, Herbst renewed the '9330 policy without change.

On January 15, 1994, at 12:01 a.m., Titan canceled the '9330

policy for non-payment and, contemporaneously, issued a second Michigan no-fault automobile insurance policy to Herbst, No. 02-PA-000037484 (the '37484 policy), which became effective immediately at 12:01 a.m. on January 15 for a period of six months. The parties agree that the '9330 policy was no longer in effect after 12:01 a.m. on January 15, 1994. The only substantive difference between the two policies is that the '37484 policy provided for the coordination of payments with other insurance providers whereas the '9330 policy did not. Both policies paid medical and health care expenses because of accidental injury arising out of the ownership, operation, maintenance or use of a motor vehicle.

On May 11, 1994, Herbst was seriously injured in an automobile accident. Herbst was covered under both the HWBP and the '37484 policy at the time of the accident. For a time, Great-West paid for Herbst's medical treatment and care as the primary insurer, and Titan made additional payments. After Great-West made payments of \$124,534.42, it stopped paying completely and filed the present action. Titan then began paying Herbst's medical expenses as the primary insurer and filed a counterclaim.

III. Analysis

A. ERISA Preemption

Both the '37484 policy and the HWBP contain provisions which govern how payments are to be made when an insured is covered by more than one insurer.² The parties agree that the HWBP, as a self-funded employee welfare benefit plan, is subject to the Employee Retirement Income Security Act of 1975 (ERISA). 29 U.S.C. §§ 1002, 1003. "[W]hen 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." Auto Owners Ins. Co. v. Thorn Apple Valley, Inc., 31 F.3d 371, 374 (6th Cir. 1994). Therefore, the language of the HWBP's COB provision determines which insurer is primarily liable.

B. Coordination of Benefits Provision

The HWBP's COB provision sets forth "[c]ertain rules . . . to determine which of the plans will pay benefits first." The parties agree that the last, catch-all, rule applies here:

- If none of the above rules establishes the order of payment, a plan under which the person has been covered for the longer time will determine its

²Such provisions are commonly referred to as "coordination of benefits" or COB provisions.

benefits before a plan covering that person for a shorter time.

Two successive plans of the same group will be considered one plan if the person was eligible for coverage under the new plan within 24 hours after the old plan terminated. A change in the amount or scope of benefits, or a change in the carrier, or a change from one type of plan to another (e.g. single employer plan to multiple employer plan) will not constitute the start of a new plan.

(emphasis in original).

C. The Dispute

Great-West argues that since the '9330 and '37484 policies are "[t]wo successive plans of the same group" and Herbst was eligible for coverage under the '37484 policy within 24 hours after the '9330 policy terminated, the '9330 and '37484 policies should be considered as one, dating back to May 3, 1993. Herbst was not covered under the HWBP until May 15, 1993, so under Great-West's interpretation, Titan is primarily liable for Herbst's medical expenses under the COB provision's longer-coverage rule.

Titan responds that the "successive plans" language of the COB provision by its terms applies only to "group" insurance plans³, and Titan is an individual insurer. Titan interprets the

³"Two successive plans of the same group will be considered one plan" (emphasis added).

"successive plans" language as providing that two successive plans of the same group insurance provider will be considered one plan. Titan is not a group insurance provider, so under its interpretation the "successive plans" provision of the longer-coverage rule does not apply. Titan argues that since Herbst was not eligible under the '37484 policy until January 15, 1994, eight months after she became eligible under the HWBP, Great-West is primarily liable for Herbst's medical expenses. In support of its position that the HWBP provision is intended to distinguish between group and individual insurance plans, Titan points to the list of plans covered by the COB provision. This list consists of three categories of group plans and one category of individual plans. Thus, Titan argues, the HWBP itself differentiates between group and individual plans. Indeed, the COB provision list even separates "group automobile 'fault' or 'no-fault' insurance" plans from "individual automobile 'no-fault' insurance plan[s]." (emphases added).

D. Conclusion

The two key words in the "successive plans" language, i.e. "two successive plans of the same group will be considered one plan," (emphases added), are not defined. Titan is certainly correct that the term "group insurance provider" is different

than the term "individual insurance provider". See, e.g., Lee Roach. Russ & Thomas F. Segalla, Couch on Insurance, § 7:3 (3d. Ed. 1995). However, Titan's suggestion that "group" should be read as "group insurance provider" strains credulity and Titan offers no plausible explanation as to why the HWBP would differentiate between individual and group insurance providers in its "successive plans" provision.

The "successive plans" language explains how the longest-coverage rule is to be applied: when a person's coverage continues through two immediately successive, substantially similar plans, the HWBP will look to the eligibility date of the first plan to determine the length of coverage under that plan. This application governs regardless of whether there was a change in the amount or scope of benefits, the carrier, or the type of plan. Thus, the COB provision stresses the continuity, rather than the type, of coverage.

The COB provision looks to the date that Titan began providing substantially uninterrupted coverage, rather than the date the latest manifestation of that coverage began. Thus, whether the '9330 and '37484 "policies" are considered a single

plan with two successive policies or two successive plans⁴, they provided continuous coverage and are thus treated as one for dating purposes under the COB provision. The term "group", rather than restricting this common-sense interpretation to group insurance providers, simply refers back to the initial listing of plan categories that potentially provided duplicate coverage⁵, and ensures that only similar plans will be joined together for priority purposes. The "same group" qualification thus ensures that a labor-management plan will only be joined to an immediately succeeding labor-management plan and not to an automobile insurance plan. Thus, the COB provision looks to May 3, 1993, as the date on which Titan's coverage of Herbst began. Since Herbst was covered by Titan longer than she was covered by Great-West, Titan is primarily liable for Herbst's medical expenses.

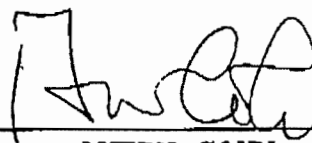
⁴The parties speak of successive Titan "policies" in their briefs, but the COB provision uses the word "plan." However, the HWBP is an ERISA "plan" rather than policy and would naturally use that term in its documents. As evidenced in Auto Owners, 31 F.3d at 374, one may compare a "traditional insurance policy" to an "ERISA plan." (emphases added).

⁵For example, "[a]ny labor-management trusteesd plan," or "[a]ny individual automobile 'no-fault' insurance plan."

IV. Order

For the reasons stated above, Great-West's motion for summary judgment is GRANTED and Titan's motion for summary judgment is DENIED. Titan is the primary insurer responsible for Herbst's hospital and medical bills and is ORDERED to pay \$124,534.42 to Great-West for the expenses it has already incurred.

SO ORDERED.



AVERN COHN
UNITED STATES DISTRICT JUDGE

DATED: FEB 18 1997

Detroit, Michigan