UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff/Counter-Defendant,

v.

GREAT-WEST LIFE AND ANNUITY INSURANCE COMPANY and MECHANICS LAUNDRY AND SUPPLY, INC. EMPLOYEE HEALTH AND WELFARE BENEFIT PLAN,

Defendants/Counter-Plaintiffs.
_____/

Case No. 96-CV-70867-DT

HONORABLE DENISE PAGE HOOD

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION/FACTS:

This matter is before the Court on the parties' Cross-Motions for Summary Judgment. Plaintiff State Farm Mutual Automobile Insurance Co. ("State Farm") filed the instant Complaint for Declaratory Relief seeking an order declaring that Plaintiff is entitled to recoup monies it has paid out as benefits on behalf of its insured, Mr. Steven Bartholomew, from Defendants Great-West Life and Annuity Insurance Company ("Great-West") and Mechanics Laundry and Supply, Inc. Employee Health and Welfare Benefit Plan ("Mechanics" or the "Plan") and that Defendants be deemed as the primary health care benefit providers for any future medical benefits. Briefs were filed and a hearing held on the matter.

On December 6, 1994, Mr. Bartholomew was involved in a motor vehicle accident and was injured. Mr. Bartholomew was a participant in the Defendant Plan and eligible to receive benefits

from the Plan. Mr. Bartholomew was also insured for personal protection benefits under the Michigan No-Fault Act under a policy issued by Plaintiff. Defendant Great-West provides a stop loss policy of insurance to Defendant Mechanics.

Plaintiff originally filed the action in the Circuit Court for the County of Genesee, State of Michigan on January 26, 1996. Defendants removed the instant action to this Court on February 24, 1996. This matter is now before the Court on the parties' cross-motions for summary judgment.

II. ANALYSIS:

A. Standard of Review.

Rule 12(b)(6) provides for a motion to dismiss for failure to state a claim upon which relief can be granted. This type of motion tests the legal sufficiency of the plaintiff's Complaint. Davey v. Tomlinson, 627 F. Supp. 1458, 1463 (E.D. Mich. 1986). In evaluating the propriety of dismissal under Rule 12(b)(6), the factual allegations in the Complaint must be treated as true. Janan v. Trammell, 785 F.2d 557, 558 (6th Cir. 1986). If matters outside the pleading are presented in a Rule 12(b)(6) motion, the motion shall be treated as one for summary judgment under Rule 56(b) and disposed of as provided in Rule 56.

Rule 56© provides that summary judgment should be entered only where "the pleadings, depositions, answers to the interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The presence of factual disputes will preclude granting of summary judgment only if the disputes are genuine and concern material facts. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute about a material fact is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. Although the Court must view the motion in the light most favorable to the nonmoving party, where "the moving

party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). Summary judgment must be entered against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Celotex Corp., 477 U.S. at 322-23. A court must look to the substantive law to identify which facts are material. Anderson, 477 U.S. at 248.

B. Coordination of Benefits.

The main issue before the Court is whether the automobile insurance policy or the Plan is primarily liable for the insured's medical expenses. Plaintiff sets forth two main arguments that the State Farm policy is not the primary carrier. First, Plaintiff argues that Defendant Plan did not expressly disavow or subordinate itself to a no fault policy. Second, if the policy of the no fault insurance is coordinated pursuant to the Defendant Plan, the terms of the Defendant Plan catch-all provision directs that the plan covering the employee/insured for the longer period of time will pay. Plaintiff claims that because the insured was covered longer under the Defendant Plan, the Defendant Plan has the primary liability for the insured's medical expenses.

1. The law.

The insurance policy and the Plan both contain coordination of benefit clauses ("COB"). There is no dispute that the Plan at issue is covered under the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. ERISA comprehensively regulates employee benefit plans. 29 U.S.C. §§ 1002, 1003. ERISA regulates benefit plans to ensure the

uniformity of decision which will assist plan administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws. Pilot Life Ins. Co., 481 U.S. 41, 56 (1987). ERISA preempts state law where a conflict exists. Auto Club Ins. Ass'n v. Health & Welfare Plans, Inc., 961 F.2d 588 (6th Cir. 1992).

The Sixth Circuit has addressed the issue of conflicting coordination of benefits in Auto Owners Ins. Co. v. Thorn Apple Valley, Inc., 31 F.3d 371 (6th Cir. 1994) wherein the Court stated:

> ... We conclude 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 373. The underlying purpose of ERISA is to protect the interests of participants in employee benefit plans and their beneficiaries. Id. at 375. Congress sought to guard qualified benefit plans from claims which have been expressly disavowed by the plans. Id.

2. Whether the COB clauses are conflicting.

Here, the parties agree that the COB claus found in Plaintiff's no fault insurance policy and the Plan do not conflict and may be reconciled. (See Plaintiff's brief, p. 10; Defendant Mechanic's brief, p. 2 (unnumbered); and Defendant Great-West's brief in support of cross-motion, p. 5). The Defendant Plan, therefore, is not automatically given effect as required in Thorn Apple Valley, supra.

3. Expressly disavow or subordinate language.

Plaintiff argues that its insurance policy has expressly subordinated itself to other health coverage and that the Defendant Plan's COB has not expressly disavowed or subordinated itself to a no fault insurance coverage. The only provision of the Defendant Plan which could arguably be applied is the catch-all provision in the Defendant Plan's COB clause. Plaintiff argues that the catch-all provision does not expressly disavow or subordinate itself to a no fault insurance coverage.

Plaintiff cites two unpublished opinions to support its argument: Dayton Hudson v. Auto Owners Ins. Co., No. 5:94-CV-151 (W.D. Mich. Nov. 20, 1995)(J. Gibson) and Campbell's Soup v. Allstate, 4:95-CV-38 (W.D. Mich. Jan. 9, 1996)(J. Bell).

Plaintiff State Farm's no fault policy provides in pertinent part:

> **Limits of Liability**
>
> * * *
>
> Benefits shown as primary are paid by us, even if payable by another source. Benefits shown as coordinated will be reduced by any amount paid or payable to you or any relative under any:
>
> * * *
>
> 2. Individual, blanket or group accident or disability insurance ...

(Plaintiff's Ex. C, p. 13). Defendant Plan also sets forth a COB clause which states in pertinent part:

> **CO-ORDINATION OF BENEFITS (COB)**
>
> The COB provision is designed to correct overcoverage which occurs when a person has health coverage for the same expenses under two or more of the plans listed below. Should this type of duplication occur, the benefits under this Plan will be co-ordinated with those of the other plans so that the total benefits from all plans will not exceed the expenses actually incurred.
>
> The benefits provided by the plans listed below are considered in determining duplication of coverage:
>
> * * *
>
> - Any individual automobile "no-fault" insurance plan.
>
> **ORDER OF BENEFIT DETERMINATION**
>
> Certain rules are used to determine which of the plans will pay benefits first. This is done by using the **first** of the following which applies:

* * *

- 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 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 of 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.

(Plaintiff's Exhibit D).

In Hudson, the district court concluded that the order of benefit determination found in Dayton Hudson's Plan did not expressly disavow or subordinate itself to a no fault insurance policy, therefore, the Plan's coverage was primary and the no-fault coverage was secondary. The Hudson court based its decision on the language in Thorn Apple Valley, supra which stated 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." 31 F.3d at 375. The Court does not agree with the Hudson court's holding.

This Court concludes that Thorn Apple Valley does not stand for the proposition that an ERISA Plan must "expressly disavow" an insurance policy before an ERISA Plan's COB is given effect. This reading would render meaningless the Sixth Circuit's holding that when COB clauses are in conflict, the ERISA plan, "including its COB clause, must be given effect." Thorn Apple Valley, 31 F.3d at 374. It would also render meaningless Congress' "primary goal of ERISA" which "is to safeguard the financial integrity of qualified plans by shielding them from unanticipated claims" such as those advanced by automobile no fault insurance policies. Thorn Apple Valley, 31

F.3d at 375. The Court notes that the Defendant Plan does contain a COB provision which establishes a priority between the Plan and other insurance carriers. Establishing a priority is a way to properly coordinate the benefits between the Plan and other insurance carriers. Thorn Apple Valley stands for the proposition that where "conflicting coordination of benefits clauses, the terms of the ERISA plan, including its COB clause, must be given full effect." 31 F.3d at 373. The analysis under Thorn Apple Valley requires the Court to determine whether the COB clauses conflict, and not to determine whether the ERISA Plan expressly disavows the no fault insurance. Here, as the parties indicate, there is no conflicting coordination benefit clauses involved.

As to the Campbell Soup Co. case, supra, the Court notes that unlike the COB clause found in the Defendant Plan, the Campbell Soup Plan makes no reference to no fault insurance or any other automobile insurance policy. Campbell Soup Co. is inapplicable to the instant case. The Defendant Plan specifically mentions "[a]ny individual automobile 'no-fault' insurance plan." (Plaintiff's Ex. D, p. IV-2).

4. Which plan or policy has covered the insured longer.

All the parties agree that the COB terms at issue may be reconciled. The issue, therefore, is which policy or plan has covered the insured longer as defined under the Defendant Plan COB language. The COB in Defendant Plan states in pertinent part:

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

Plaintiff contends that because its policies are only in effect for six month terms, the Defendant Plan is primary. There is no dispute that the insured was covered under the Defendant Plan beginning May 1, 1993. There is also no dispute that the no fault insurance policy in effect at the time Plaintiff

was injured was for the period April 6, 1994 to October 6, 1994. (Plaintiff's brief, Ex. A). Defendant Mechanics Laundry submitted evidence indicating that the insured applied for the April 6, 1994 policy on April 6, 1994 at 3:50 p.m. (Defendant Mechanics Laundry's brief in opposition, Ex. C).

Defendants claim that Plaintiff State Farm issued a policy to Mary Bartholomew, Steve Bartholomew's wife, on February 8, 1993. Plaintiff submits evidence indicating that the February 8, 1993 policy (Policy No. 9237445) was canceled effective September 12, 1993 and said policy was not renewed until after September 12, 1993 (Kawana Denise Henry 12/13/96 affidavit).[1] Another insurance policy issued to Mary Bartholomew (Policy No. 9024919) was canceled effective June 15, 1993.[2] (Kawana Denise Henry 12/13/96 affidavit). Defendant Great-West submits evidence indicating that Steve Bartholomew was issued no fault insurance by Plaintiff Great-West effective September 23, 1993 to March 25, 1994. (Defendant Great-West's brief in support of cross-motion, Ex. D). Defendant did not submit any evidence indicating that Plaintiff was insured by Plaintiff between the dates March 25, 1994 to April 6, 1994.

Plaintiff submits an unsigned and undated Decree of Divorce in support of its argument that because the Bartholomews were separated on or about March 20, 1993, Mr. Bartholomew is not covered under Mary Bartholomew's insurance coverage. The Court will not consider the unsigned and undated Decree of Divorce. The parties have not submitted any other evidence regarding insurance policy coverage.

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[1] The Court notes that the computer printout attached as Exhibit A does not indicate when this policy was issued nor the effective date of the policy. Defendant Great-West's Exhibit A attached to its brief in support of its cross-motion indicates that the policy period was for February 8, 1993 to August 8, 1993.

[2] There is no indication when the effective date of this policy was.

Based on the above, the Court finds that Defendant Plan is the primary coverage because Defendants have not submitted any evidence indicating that prior to April 6, 1994, the insured was covered by Plaintiff Plan between the policy effective until March 25, 1994 and April 6, 1994 when the insured submitted an application with Plaintiff. The Defendant Plan specifically states:

> 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 of 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.

(Plaintiff's Ex. D). Here, there is no evidence indicating that the insured was covered by Plaintiff between March 25, 1994 to April 6, 1994. Under the Defendant Plan's COB, because the insured was covered longer by the Defendant Plan, the Defendant Plan is primarily liable to pay the insured's health benefits. Plaintiff State Farm is secondary.

III. CONCLUSION:

For the reasons set forth above, Defendant Plan is the primary carrier and Plaintiff is the secondary carrier.

Accordingly,

IT IS ORDERED that Plaintiff's Motion for Summary Judgment (Docket No. 15, filed 9/20/96) is GRANTED and

IT IS FURTHER ORDERED that Defendant Great-West's Cross-Motion for Summary Judgment (Docket No. 18, filed 10/2/96) is DENIED.

DENISE PAGE HOOD
United States District Judge

DATED: JUN 26 1997