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IN THE COMMON PLEAS COURT OF PERRY COUNTY. OHIO

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TIMOTHY J WOLLENBERG
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J. 295
P. 465-467

Perry County Health Plan, et al.	15 CV 0219
Plaintiffs	
vs	Judgment Entry on
State Farm Mutual Automobile Insurance Company, et al.	Motions for Summary
Defendants	Judgment

The parties filed cross motions for summary judgment and a stipulation of facts. The parties agree upon the standard the Court is to use in deciding the motions.

Justus Ardetto was riding in an automobile which was involved in an accident caused by the driver of said vehicle. The driver and the owner of the vehicle who was another person lacked automobile liability coverage.

Jason Fulk, Ardetto's stepfather, was an employee of Perry County. He and Ardetto, his dependent, received medical benefits from plaintiff Perry County Health Plan (PCHP).

Fulk was insured by defendant State Farm Mutual Automobile Insurance Company (SFMAIC). Fulk and Ardetto are qualified insureds for the purposes of uninsured/underinsured motorist coverage and medical payments coverage.

PCHP paid Ardetto's medical bills. Fulk and Ardetto did not make a claim for the medical bills under Fulk's SFMAIC policy. SFMAIC has not paid Fulk and Ardetto for Ardetto's incurred medical bills, pain and suffering or any other form of damages. Fulk has not assigned his rights under the SFMAIC policy to PCHP.

In its complaint, PCHP seeks reimbursement for the medical bills which it paid Ardetto under its subrogation provision. SFMAIC does not dispute the reasonableness of the charges incurred by Ardetto which were paid by PCHP.

The Subrogation and Third Party Recovery language of the PCHP Summary Plan Description contains the pertinent provisions which the Court summarizes. Subrogation applies to insurance companies which are responsible for the payment of medical expenses to a Covered Person due to an injury. PCHP may recover medical expenses which it paid on behalf of the injured person from the insurance company which is also responsible for the same payment of medical expenses. By accepting PCHP's payment of medical expenses, the Covered Person automatically assigns to PCHP the right to recover the payments made by PCHP from the insurance company. (p. 67)

The Court finds that Fulks and Ardetto automatically assigned their subrogation rights to PCHP when they accepted PCHP's payments of the medical expenses. Fulks and Ardetto did not have to make a claim to SFMAIC for these payments nor did either man have to specifically assign his right of recovery against SFMAIC to PCHP.

The Court finds that the PCHP language is similar to the subrogation language in the Blue Cross health insurance policy in Blue Cross and Blue Shield Mut. Of Ohio v. Hrenko, 72 Ohio St. 3d 120 (1995). The Court concluded as follows:

"It is uncontroverted that Burns negligently caused the accident and that Hrenko sustained injuries as a result. Accordingly, Hrenko is entitled to recover damages from Burns, who operated the uninsured vehicle. Due to the fact that Burns is uninsured, under the terms of its uninsured motorist provision Allstate is a party liable for damages Hrenko sustained, including medical expenses.

It follows that because Blue Cross paid Hrenko's medical expenses, under the subrogation clause it succeeds to Hrenko's right to seek reimbursement from Allstate, which is liable for the medical expenses under Hrenko's uninsured motorist coverage."

The above is the situation in the instant case. Because PCHP paid Ardetto's medical expenses, then it succeeds to Ardetto's right to seek reimbursement from SFMAIC which is liable under Fulk's uninsured motorist coverage.

SFMAIC will argue correctly that the Court omitted this sentence which follows the last sentence quoted above:

"Because Hrenko already received the payments from Allstate, Blue Cross may seek reimbursement from Hrenko and was entitled to partial summary judgment in its favor."

However, Ardetto or Fulks did not receive a payment for Ardetto's medical expenses directly from SFMAIC in addition to PCHP paying Ardetto's medical expenses. The Hrenko fact situation is not the fact situation herein.

Defendant also submits that Fulks and Ardetto's rights for the payment of medical expenses under the SFMAIC policy cannot be assigned because of the anti-assignment provision in the policy:

"10. Assignment

No assignment of benefits or other transfer of rights is binding upon us unless approved by us." (p. 32)

The Court finds that Pilkington N. Am. Inc. v. Travelers Cas. & Sur., 112 Ohio St.3d 482 (2006) does not apply. The case does not involve subrogation rights. The fact situation is not similar.

Pilkington acquired a manufacturing business. Pilkington claimed a right to defenses and indemnification from the previous owner's insurance carriers for environmental liabilities arising from the previous owner's operations. The insurance carriers contended that the transfer and assumption agreement between Pilkington and the seller did not transfer any interest under the policy because of the anti-assignment clause in the policy.

The court held that the insurance company had a duty to indemnify despite an anti-assignment provision in the policy because the covered loss had already occurred. However, Pilkington did not prevail because it had assumed the liability by contract with the seller.

The Court also finds that West Broad Chiropractic v. American Family Ins. Co., 112 Ohio St.3d 497 (2009) does not apply. An anti-assignment clause in a policy is not at issue in West Broad. The interpretation of R. C. 3729.06 is not an issue herein.

The Supreme Court of Ohio held as a matter of law that the injured person had no present rights to settlement funds when she signed the assignment to West Broad in return for receiving chiropractic treatment. Because she had no rights to assign, West Broad could not recover from American Family.

The West Broad facts are not similar to the instant case. West Broad also does not concern the interpretation of subrogation rights.

Unlike the injured person in West Broad, Ardetto and Fulks received payments from PCHP. Then, they had rights which were automatically assigned to PCHP by virtue of language in the plan.

The Court finds that SFMAIC's anti-assignment provision does not prevent PCHP from pursuing Ardetto and Fulk's claim under the uninsured/underinsured portion of the policy. PCHP's subrogation rights did not arise until it paid Ardetto's medical expense. Pilkington, supra, shows that a policy's anti-assignment provisions may be defeated by other considerations.

SFMAIC's anti-assignment language is ambiguous because it fails to describe whether it applies only to situations in which the insured assigns or the assignment is made pursuant to the operation of the policy or law. In addition, SFMAIC's anti-assignment provision does not specifically apply to subrogation provisions in another policy.

Based upon the parties' stipulation, the Court finds that the facts are not in dispute. In construing the evidence most strongly in SFMAIC's favor, the Court finds that reasonable minds are in agreement that plaintiff PCHP is entitled to judgment as a matter of law. In construing the evidence most strongly in PCHP's favor, the Court finds that reasonable minds are not in agreement that SFMAIC is entitled to judgment as a matter of law.

For the reasons stated, the Courts grants PCHP's motion for summary judgment and denies SFMAIC's motion for summary judgment.

Accordingly, the Court awards a judgment in the sum of $35,792.36, plus interest at the statutory rate and costs to Plaintiff Perry County Health Plan and against Defendant State Farm Mutual Insurance Company.

IT IS SO ORDERED.

Judge Michael Ward by Assignment

This is a FINAL APPEALABLE ORDER.

Matthew T. Anderson, Esq. and M. Salman Shah, Esq. for Plaintiff PCHP

Mitchell M. Tallan, Esq. for Defendant SFMAIC