

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

LIFE INSURANCE COMPANY OF)
NORTH AMERICA, a foreign corporation,)
)
Plaintiff,)
)
)
vs.)
)
CORA SUE BERRYHILL, an individual;)
ANDERSON BERRYHILL III, an)
individual; And HUDSON INSURANCE)
GROUP, a foreign corporation,)
)
Defendants.)

Case No. 6:15-CV-00064-RAW

DEFENDANT HUDSON INSURANCE COMPANY REPLY

ERISA is not determinative of the rights and liabilities
of the parties to the Tribal Court action

The case filed by Hudson in Muscogee (Creek) Nation District Court is against insurers, Cigna Health & Life Insurance Company (“Cigna”) and Life Insurance Company of North America (“LINA”), and third party administrators, RWI Benefits, LLC, and Benefit Management, Inc. The suit alleges negligence in the failure to make an insurability determination requiring Hudson to pay life insurance benefits to the Berryhills. (Amended petition attached).

The suit does not rely upon ERISA.

The purpose of ERISA is to “protect. . . the interests of participants in employment benefit plans and their beneficiaries.” 29 U.S.C. §1001(b).

The Berryhills have been paid. Their interests have been protected.

ERISA does not apply to suits between insurers and third party administrators over which entity should have made an insurability determination. Hudson made payment under its “Employee Benefits Liability” provision. No payments were made under ERISA’S mandate

between CIGNA/LINA and the Berryhills. Claims for reimbursement between insurers are not pre-empted by ERISA. *Sheridan Health Corp., Inc. v. Neighborhood Health Partnership, Inc.*, 459 F. Supp. 2d., 1269 (S.D. Florida 2006). Suits between insurers for reimbursement of benefits paid which do not seek enforcement of ERISA are not pre-empted by ERISA. *Memorial Hosp. for Cancer and Allied Diseases v. Empire Blue Cross & Blue Shield*, 1994 WL 132151 (S.D. N.A. 1994).

LINA's reliance on *Vandever v. Osage Nation Enterprise, Inc.*, No. 06-CV-380-GKF-TLW, 2009, WL 702776 (N.D. Okla. Mar. 16, 2009) is misplaced. That suit was brought by individual beneficiaries to *enforce* ERISA rights when it was determined that the insured was not an employee under the plan. Likewise, any determination of whether or not Berryhill was performing an "essential governmental function" and, therefore subject to an exception to ERISA, does not apply. *Stopp v. Omaha Life Insurance Company*, No. CIV-09-221-FHS, 2010, WL 1994899 (E. D. Okla. May 18, 2010). These cases simply do not apply to this situation. This case should be dismissed.

Respectfully submitted,

/s/ James G. Wilcoxon

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CERTIFICATE OF SERVICE

I certify that on March 27th, 2015, the above was sent via U.S. Mail to the below counsel of record:

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