

LYNETTE BAYHAM, ET AL

DOCKET NO.: C628132 SEC.:25

VERSUS

19th JUDICIAL DISTRICT COURT

STATE OF LOUISIANA, THROUGH
THE OFFICE OF GROUP BENEFITS

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ANSWER AND RECONVENTIONAL DEMAND

NOW INTO COURT, through undersigned counsel, comes defendant, the State of Louisiana, Office of the Governor, Division of Administration, **Office of Group Benefits** (named in the petition as the Office of Group Benefits and referred to as OGB), who answers the petition as follows:

1.

The allegations of paragraph 1 are admitted, except with respect to the allegation of "insurance," which allegation is denied.

2.

The allegations of paragraph 2 of the petition require no response, but to the extent a response is deemed necessary, the allegations of paragraph 2 are denied for lack of sufficient information.

3.

The allegations of paragraph 3 of the petition require no response, but to the extent a response is deemed necessary, the allegations of paragraph 3 are denied for lack of sufficient information.

4.

The allegations of paragraph 4 of the petition require no response, but to the extent a response is deemed necessary, the allegations of paragraph 4 are denied for lack of sufficient information.

5.

The allegations of paragraph 5 of the petition require no response, but to the extent a response is deemed necessary, the allegations of paragraph 5 are denied for lack of sufficient information.

6.

The allegations of paragraph 6 of the petition require no response, but to the extent a response is deemed necessary, the allegations of paragraph 6 are denied for lack of sufficient information.

7.

The allegations of paragraph 7 of the petition require no response, but to the extent a response is deemed necessary, the allegations of paragraph 7 are denied for lack of sufficient information.

8.

The allegations of paragraph 8 of the petition require no response, but to the extent a response is deemed necessary, the allegations of paragraph 8 are denied for lack of sufficient information.

9.

The allegations of paragraph 9 of the petition are denied for lack of sufficient information.

10.

The allegations of paragraph 10 of the petition are denied.

11.

The allegations of paragraph 11 of the petition are denied for lack of sufficient information.

12.

The allegations of paragraph 12 of the petition are admitted, except with respect to the allegation of "insurance," which allegation is denied.

13.

The allegations of paragraph 13 of the petition are admitted.

14.

The allegations of paragraph 14 of the petition are denied for lack of sufficient information.

15.

The allegations of paragraph 15 that OGB received a letter from the plaintiff (through counsel) dated February 19, 2013, and the subject matter of the letter are admitted; however, OGB denies that the "make whole" doctrine is applicable or precludes OGB's recovery from the settlement funds.

16.

The allegations of paragraph 16 of the petition are denied for lack of sufficient information.

17.

The allegations of paragraph 17 that OGB contacted Mr. Leavoy by letter dated February 22, 2013, regarding its subrogation and reimbursement rights are admitted. In all other respects, the allegations of paragraph 17 are denied.

18.

The allegations of paragraph 18 of the petition are denied for lack of sufficient information.

19.

The allegations of paragraph 19 that OGB received a letter from the plaintiff (through counsel) dated April 1, 2013, and the subject matter of the letter are admitted; however, OGB denies that the "make whole" doctrine is applicable or precludes OGB's recovery from the settlement funds.

20.

The allegations of paragraph 20 that OGB received a letter from the plaintiff (through counsel) dated April 12, 2013, and the subject matter of the letter are admitted; however, OGB denies that the "make whole" doctrine is applicable and precludes OGB's recovery from the settlement funds.

21.

The allegations of paragraph 21 of the petition are denied for lack of sufficient information.

22.

The allegations of paragraph 22 that OGB contacted Mr. Leavoy by letter dated May 14, 2013, regarding OGB's subrogation and reimbursement rights are admitted. In all other respects, the allegations of paragraph 22 are denied.

23.

The allegations of paragraph 23 of the petition are denied.

24.

The allegations of paragraph 24 of the petition are denied.

25.

The allegations of paragraph 25 of the petition are denied.

26.

The allegations of paragraph 26 of the petition are denied.

AND FURTHER ANSWERING:

1.

OGB pleads, and incorporates herein by reference and as though copied herein in extenso, all provisions of the OGB HMO plan document, in effect at all times pertinent hereto.

2.

OGB contends that the plaintiffs have been "made whole" by their settlements that resulted from the June 13, 2012, automobile wreck.

3.

At all times pertinent hereto, the plaintiffs had a contractual agreement with OGB, which provides OGB with subrogation and reimbursement rights, and those rights apply regardless of whether the plaintiffs have been made whole.

4.

OGB specifically pleads the following, set forth in the OGB HMO Plan Document in effect at all times pertinent hereto:

Subrogation and Reimbursement

Upon payment of any eligible Benefits covered under this Plan, the Office of Group Benefits shall succeed and be subrogated to all rights of recovery of the covered Employee, his Dependents or other Covered Persons, or their heirs or assigns, for whose benefit payment is made, and they shall execute and deliver instruments and papers and do whatever is necessary to secure such rights, and shall do nothing after loss to prejudice such rights.

The Office of Group Benefits has an automatic lien against and shall be entitled, to the extent of any payment made to a covered Employee, his Dependents or other Covered Persons, to 100% of the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of a covered Employee, his Dependents or other Covered Persons, against any person or entity legally responsible for the disease, illness, accident or injury for which said payment was made.

To this end, covered Employees, their Dependents, or other Covered Persons agree to immediately notify the Office of Group Benefits of any action taken to attempt to collect any sums against any person or entity responsible for the disease, illness, accident or injury.

These subrogation and reimbursement rights also apply when a Covered Person recovers under, but not limited to, an uninsured or underinsured motorist plan, homeowner's plan, renter's plan, medical malpractice plan, worker's compensation plan or any general liability plan.

Under these subrogation and reimbursement rights, the Office of Group Benefits has a right to first recovery to the extent of any judgment, settlement, or any payment made to the covered Employee, his Dependents or other Covered Persons. These rights apply regardless of whether such recovery is designated as payment for, but not limited to, pain and suffering, medical benefits, or other specified damages, even if he is not made whole (i.e., fully compensated for his injuries).

5.

OGB avers that the plaintiffs are responsible for reimbursing OGB one hundred percent of the medical benefits that OGB issued on the plaintiffs' behalf.

RECONVENTIONAL DEMAND

And further, as plaintiff-in-reconvention, OGB avers:

I.

The **Office of Group Benefits** is responsible for providing life insurance and group health and accident benefits for the employees of the State of Louisiana and certain political subdivisions of the state.

II.

Made Defendants-in-Reconvention are the following:

A. **Lynette Bayham**, a person of the full age of majority and domiciled in the Parish of Ascension, State of Louisiana; and,

B. **Adam Bayham**, a person of the full age of majority and domiciled in the Parish of Ascension, State of Louisiana.

III.

At all times pertinent herein, defendants-in-reconvention, **Lynette Bayham** and **Adam Bayham**, were enrolled for health and accident benefits with the **Office of Group Benefits** and eligible to receive group health benefits pursuant to their OGB HMO Plan coverage.

IV.

As shown in the original petition, **Lynette Bayham** and **Adam Bayham** were physically injured in an automobile accident on June 13, 2012.

V.

As a result of the injuries suffered by defendants-in-reconvention, **Lynette Bayham** and **Adam Bayham**, in the automobile wreck on June 13, 2013, plaintiff-in-reconvention, the **Office of Group Benefits**, issued benefits for medical treatment on behalf of **Lynette Bayham** in the total amount of \$32,252.74, and on behalf of **Adam Bayham** in the total amount of \$7,128.43.

VI.

At all times pertinent hereto, the *OGB HMO Plan Document* included the following provision:

Subrogation and Reimbursement

Upon payment of any eligible Benefits covered under this Plan, the Office of Group Benefits shall succeed and be subrogated to all rights of recovery of the covered Employee, his Dependents or other Covered Persons, or their heirs or assigns, for whose benefit payment is made, and they shall execute and deliver instruments and papers and do whatever is necessary to secure such rights, and shall do nothing after loss to prejudice such rights.

The Office of Group Benefits has an automatic lien against and shall be entitled, to the extent of any payment made to a covered Employee, his Dependents or other Covered Persons, to 100% of the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of a covered Employee, his Dependents or other Covered Persons, against any person or entity legally responsible for the disease, illness, accident or injury for which said payment was made.

To this end, covered Employees, their Dependents, or other Covered Persons agree to immediately notify the Office of Group Benefits of any action taken to attempt to collect any sums against any person or entity responsible for the disease, illness, accident or injury.

These subrogation and reimbursement rights also apply when a Covered Person recovers under, but not limited to, an uninsured or underinsured motorist plan, homeowner's plan, renter's plan, medical malpractice plan, worker's compensation plan or any general liability plan.

Under these subrogation and reimbursement rights, the Office of Group Benefits has a right to first recovery to the extent of any judgment, settlement, or any payment made to the covered Employee, his Dependents or other Covered Persons. These rights apply regardless of whether such recovery is designated as payment for, but not limited to, pain and suffering, medical benefits, or other specified damages, even if he is not made whole (i.e., fully compensated for his injuries).

VII.

As shown in the original petition, defendant-in-reconvention **Lynette Bayham** settled her cause of action against third parties prior to notifying OGB of same.

VIII.

Defendants-in-reconvention, **Lynette Bayham** and **Adam Bayham**, did not provide OGB with timely notice to allow OGB to choose whether it desired to intervene, or bring its own action to recover for medical benefits issued on behalf of the defendants-in-reconvention. Therefore, an assessment of attorney fees is not justified, and OGB is entitled to recover one hundred percent of the medical benefits issued on behalf of the defendants-in-reconvention.

IX.

OGB avers that it is entitled to recover one hundred percent of the medical benefits issued on behalf of defendants-in-reconvention, from the settlement funds received by defendants-in-reconvention.

X.

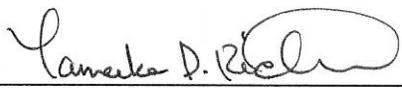
The filing of this *Reconventional Demand* will not delay the progress of the principal action.

WHEREFORE, OGB prays,

- I. That this *Answer* be deemed good and sufficient and, after all due proceedings had, plaintiffs' suit be dismissed with prejudice at plaintiffs' costs;

- II. That this *Answer and Reconventional Demand* be served to defendants-in-reconvention, **Lynette Bayham** and **Adam Bayham**, through their counsel of record;
- III. For judgment in favor of plaintiff-in-reconvention, **Office of Group Benefits**, against defendants-in-reconvention, **Lynette Bayham** and **Adam Bayham**; in solido, for an amount reasonable in the circumstances, with legal interest and costs;
- IV. For judgment in favor of plaintiff-in-reconvention, **Office of Group Benefits**, against defendants-in-reconvention, **Lynette Bayham** and **Adam Bayham**, granting a credit against benefits owed for future medical expenses incurred for treatment of injuries resulting from this automobile wreck up to the amount of settlement funds recovered by each defendant-in-reconvention as allowed by law and equity; and,
- V. For full, general and equitable relief.

Respectfully submitted:

By: 
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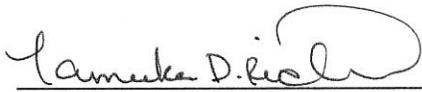
SERVICE INSTRUCTIONS

PLEASE SERVE:
LYNETTE BAYHAM and **ADAM BAYHAM**,
 Through their Counsel of Record:

Mr. Lindsey Leavoy
2171 Quail Run Drive, Suite B
Baton Rouge, LA 70808
Telephone No.: 225-761-3822

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has this day been forwarded to all counsel of record by placing same, properly addressed, in the U.S. Mail, postage prepaid, on this 6th day of March, 2014.


 Tameika D. Richard