

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL SIKORA : CIVIL ACTION  
v. :  
ROSENBERGER COLD STORAGE, INC., :  
et al. : NO. 00-1053

**MEMORANDUM AND ORDER**

FULLAM, Sr.J. MAY , 2000

Plaintiff Carol Sikora brings this action pursuant to the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001 *et seq.* Ms. Sikora was employed by defendant Rosenberger Cold Storage and participated in the employer's 401(k) Plan. On June 15, 1998, as a result of a sale or merger, defendant CS Integrated (CSI) became plaintiff's employer. In light of coming changes to the 401(k) Plan, Ms. Sikora opted to receive a disbursement of the money in her account, intending to "roll over" these funds into another qualified plan. Due to an administrative error on the part of CSI, plaintiff received a check for only a portion of her Plan balance. It took two months to rectify this situation; in the meantime she was advised not to negotiate the check she had been sent. Unfortunately for plaintiff, she lost what she would have earned in the stock market had the funds either remained in the 401(k) Plan or been reinvested elsewhere.

The only claim asserted against CSI is a negligence claim arising under state law.

CSI has moved to dismiss this claim, arguing that it is preempted by ERISA. While the Third Circuit has not specifically stated that a claim for damages arising from the negligent delay in processing a payment under an employee benefit plan “relates to” such a plan, I have no difficulty in so holding, given the many other state law claims that have been found to be subject to ERISA preemption. *See, e.g., Pilot Life Ins. v. Dedeaux*, 481 U.S. 41 (1987)(bad faith claim based on improper processing of a claim preempted); *Pane v. RCA Corp.*, 868 F.2d 631 (3d Cir. 1989)(breach of contract, intentional infliction of emotional distress, and breach of covenant of good faith and fair dealing claims preempted). If plaintiff has a claim against this defendant, it must arise under ERISA’s enforcement scheme. Of course, I make no determination concerning the merits of such a claim.

An Order follows.

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**ORDER**

AND NOW, this            day of May, 2000, IT IS ORDERED:

1. The motion to dismiss of defendant CS Integrated, L.L.C., is GRANTED.
2. The complaint is DISMISSED against this defendant ONLY.
3. If plaintiff can do so consistent with the obligations imposed by Federal

Rule of Civil Procedure 11, she may file an amended complaint within twenty (20) days in order to assert a claim against this defendant pursuant to the Employee Retirement Income Security Act (ERISA).

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Fullam, Sr.J.