

athletic director, its head wrestling coach, and the former student who was wrestling with their son at the time of his injury. While that litigation was pending, Defendant asserted a subrogation lien for medical expenses paid on behalf of Louis Sciotto in the amount of \$1,087,000. Plaintiffs allege that in connection with settlement discussions in that case, Defendant represented that in 2000, Plaintiffs would be covered under the same medical insurance policy in effect for them during 1999. Subsequently, that litigation was settled, and Defendant was reimbursed its subrogation lien less attorney's fees.

After settlement, Plaintiffs were informed that, in fact, they would *not* have access to the same medical coverage in 2000, and would be covered under a less expansive policy which, they allege, restricts private duty nursing benefits critical to Louis Sciotto's care. As a result, approximately \$500,000 in medical bills for nursing care in 2000 were not paid by Defendant.

On July 25, 2001, Plaintiffs filed this action in the Court of Common Pleas of Delaware County, Pennsylvania, and filed an Amended Complaint in that Court on August 31, 2001. In their Amended Complaint, Plaintiffs allege state common law claims of breach of contract, misrepresentation, fraudulent misrepresentation, and unjust enrichment against Defendant for its failure in 2000 to maintain the same insurance policy coverage for them that was in effect during 1999. Plaintiffs allege that Defendant's representations as to this matter were critical to the settlement of the prior litigation.

On October 1, 2001, Defendant removed this matter to this Court, asserting that Plaintiffs' claims are preempted by the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and that the action is therefore removable under the

complete preemption exception to the well-pleaded complaint rule. Plaintiffs now counter in their motion that the case is not so removable and must be remanded.

II. LEGAL STANDARD

By statute, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant.” 28 U.S.C. § 1441(a). One category of cases for which federal district courts have original jurisdiction are cases “arising under the Constitution, law or treaties of the United States.” 28 U.S.C. § 1331. In general, a cause of action only arises under federal law when the face of the plaintiff’s well-pleaded complaint raises federal law issues. Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149 (1908). Federal preemption, a defense, is usually not a part of a plaintiff’s well-pleaded complaint and therefore ordinarily does not, in and of itself, allow for removal to federal court. However, the Supreme Court has recognized that in certain instances Congress may so completely preempt an area of law that state claims are effectively converted into claims arising under federal law. See Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557 (1968). In Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987), the Supreme Court held that an action asserting only state law claims is *completely* preempted, and is therefore removable as an exception to the well-pleaded complaint rule, if the state law claims are preempted both by ERISA’s general preemption clause, § 514(a), *as well as* its provision that sets forth its civil enforcement mechanism, § 502(a). Id. at 62-67.

ERISA’s general preemption clause, § 514(a), preempts “any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” covered by ERISA. 29

U.S.C. § 1144(a). In this context, the term “State law” encompasses state common law causes of action, as it includes “all laws, decisions, rules, regulations or other state action having the effect of law, of any State.” 29 U.S.C. § 1144(c)(1). ERISA’s civil enforcement provision, § 502(a), states in pertinent part that “a civil action may be brought ... by a participant or beneficiary ... to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the plan.” 29 U.S.C. § 1132(a).

III. DISCUSSION

The first prong of the removal (or complete preemption) analysis concerns whether Plaintiffs’ claims “relate to” an ERISA benefit plan so as to be expressly preempted by ERISA’s general preemption clause, § 514(a). Plaintiffs argue that their state common law claims for breach of contract, misrepresentation, fraudulent misrepresentation, and unjust enrichment are not preempted because they “relate to” the *future availability* of an employee benefit plan, rather than the administration of a plan in place for them. Plaintiffs contend that, although the phrase “relate to” has been interpreted in the normal, rather broad sense of the phrase, to mean “a connection with or reference to such a plan,” Shaw v. Delta Airlines, Inc., 463 U.S. 85, 97 (1983), in this case the connection with a plan is just too “tenuous, remote or peripheral” to be preempted by ERISA. Id. at 100. Plaintiffs direct the Court to two cases in support of their argument: Greenblatt v. Budd Co., 666 F. Supp. 735 (E.D. Pa. 1987) and Albert Einstein Med. Ctr. v. Action Mfg. Co., 697 F. Supp. 883 (E.D. Pa. 1988). Unfortunately for Plaintiffs, Albert Einstein is notably inapposite to the facts of this case, and neither decision

represents the weight of authority after the Supreme Court's decision in Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990).

In Albert Einstein, an employer allegedly made representations to a medical provider that it would pay for all services rendered to its employee, when in fact the employee's benefit plan capped her amount of medical benefits. The medical provider sued the employer for recovery of the unpaid expenses under a theory of estoppel. The Court held that ERISA did not preempt the medical provider's estoppel claim because, it reasoned, the claim did not turn on any interpretation of the rights of – and in fact was completely independent from – the beneficiary's *actual* rights under the plan. Albert Einstein, 697 F. Supp. at 884. In contrast, in the case before this Court, Plaintiffs are beneficiaries of a plan seeking to recover benefits pursuant to the terms of the plan under which they were covered in 1999, and, they allege, under which they should have been covered in 2000.¹

However, the Supreme Court has provided additional guidance in this area that postdates both Albert Einstein and Greenblatt. In Ingersoll-Rand, the Court found that ERISA preempted a plan participant's state law cause of action for wrongful termination due to his employer's attempt to avoid paying pension benefits. Since the cause of action was predicated on the existence of an ERISA plan and the court's inquiry must therefore be directed to the plan, the Court found that such a cause of action "relate[d] to" an ERISA plan under the meaning of § 514(a). Ingersoll-Rand, 498 U.S. at 139-140. In short, the Court held, ERISA preempts state

1. Greenblatt is more similar to the case at bar. In Greenblatt, the court held that ERISA did not preempt a beneficiary's state law claim of misrepresentation against his employer for allegedly promising the beneficiary that his pension benefit plan would be made equal to the benefits provided to similarly-salaried employees who were covered under a different plan. However, as discussed infra, that case does not represent the weight of authority after Ingersoll-Rand.

causes of action where “there simply is *no* cause of action if there is no plan.” Id. at 140 (emphasis in original).² Plaintiffs’ claims in the case before this Court similarly depend upon the existence of an employee benefit plan, and similarly direct the Court’s inquiry to the terms of the two plans at issue. Plaintiffs’ contention that their claims concern the future availability of a plan, as opposed to the administration of a plan in place, is therefore a distinction that makes no difference under Ingersoll-Rand.

Accordingly, after Ingersoll-Rand, the weight of authority holds that under § 514(a), ERISA expressly preempts state common law causes of action in which plan participants or beneficiaries allege that misrepresentations made or contracts entered into outside the terms of their benefits plan require that benefits be provided to them.³ While most of these cases involve suits against employers, the reasoning behind these decisions is equally applicable to suits against ERISA benefit plan administrators, such as Defendant. Such an analysis is also compatible with the general distinction recently clarified by the Third Circuit – that, while suits against plan

2. The Court continues to cite with approval this category of ERISA-preempted state law. See, e.g., DeBuono v. NYSA-ILA Med. & Clinical Servs. Fund, 520 U.S. 806, 815 n.14 (1997).

3. See, e.g., Buxton v. Consol. R. Corp., No. 98-2409, 1999 WL 46610 (E.D. Pa. Jan. 6, 1999)(ERISA preempts breach of contract, negligent misrepresentation and promissory estoppel claims by employee against employer when employer allegedly misrepresented that it would rescind employee’s application for voluntary separation program that terminated employee’s ability to participate in ERISA plan if employee obtained employment elsewhere within company while application was pending); Penyak v. UNUM Life Ins. Co. of America, No. 97-2117, 1998 WL 171213 (D. Kan. Mar. 12, 1998)(ERISA preempts breach of contract, negligent misrepresentation and promissory estoppel claims by beneficiary against employer when employer allegedly misrepresented that employee would qualify for disability insurance coverage); Wassil v. Advanced Tech. Labs., Inc., No. 95-6777, 1996 WL 238688 (E.D. Pa. May 7, 1996)(ERISA preempts breach of contract and unjust enrichment claims by employee against employer when employer failed to provide retirement plan benefits allegedly due upon corporate sale pursuant to employee’s written employment contract); Nealy v. U.S. Healthcare HMO, 844 F. Supp. 966 (S.D.N.Y. 1994)(ERISA preempts breach of contract and misrepresentation claims by beneficiary against plan administrator when administrator allegedly misrepresented that beneficiary’s special health needs would be covered under plan); Bernatowicz v. Colgate-Palmolive Co., 785 F. Supp. 488 (D.N.J.), aff’d, 981 F.2d 1246 (3d Cir. 1992)(ERISA preempts negligent misrepresentation claim by beneficiary against employer when employer allegedly misrepresented plan eligibility rule and beneficiary lost opportunity for certain pension benefits).

administrators are not preempted if they concern “the quality of the medical treatment performed,” they are completely preempted if they challenge “the administration of or eligibility for benefits.” Pryzbowski v. U.S. Healthcare, Inc., 245 F.3d 266, 272-273 (3d Cir. 2001).

One case in particular that presents a similar fact pattern to the case at bar is Franklin v. QHG of Gadsden, Inc., 127 F.3d 1024 (11th Cir. 1997). In that case, the plaintiff told a potential future employer that she would only accept a job offer if her husband, who required 24-hour home nursing care and was receiving that care pursuant to the benefit plan of his former employer, would have access to the same level of care under the benefit plan provided by her new employer. After receiving assurances that her husband would be “grandfathered” into immediate eligibility for home nursing care under the new plan, she accepted employment. However, after her job began and her employer was subsequently bought, the plaintiff was notified that her employer’s plan would be modified to exclude such coverage. The court held that the plaintiff’s claims for fraud in the inducement, deceit, and misrepresentation were preempted by ERISA.⁴ The court reasoned that the claims asserted were related to an ERISA plan because the benefits promised by the defendant and sought by the plaintiff were ERISA plan benefits, and because the claims would require a court to compare the benefits available under various ERISA plans. Id. at 1028-1029. This is exactly what the claims in the present case call upon this Court to do.

Finally, after Ingersoll-Rand, many courts have specifically rejected Greenblatt and Albert Einstein. See, e.g., Bernatowicz, 785 F. Supp. at 493 (“Greenblatt ... is not critically

4. In fact, significantly, the court ruled that these claims were completely preempted under ERISA and therefore subject to removal to federal court. Id. at 1029.

distinguishable from the present case; however, I decline, as did the Seventh Circuit in Lister v. Stark, 890 F.2d 941 (7th Cir. 1987), to follow Greenblatt here.”); Carl Colteryahn Dairy, Inc. v. Western Pennsylvania Teamsters & Employers Pension Fund, 785 F. Supp. 536 (W.D. Pa. 1992); Northwestern Inst. of Psychiatry, Inc. v. Travelers Ins. Co., No. 92-1520, 1992 WL 236257 at *7 (E.D. Pa. Sept. 3, 1992)(declining to follow Albert Einstein in light of Ingersoll-Rand); Ricci v. Goberman, 840 F. Supp. 316, 318 n.4 (D.N.J. 1993); Penyak, 1998 WL 171213 at *6 (“The authorities cited by plaintiff, e.g., Greenblatt ... have not been followed by most courts.”)

In light of all the above, this Court finds that ERISA preempts Plaintiffs’ claims under § 514(a) because they “relate to” an ERISA plan.

The second prong of the removal analysis concerns conflict preemption under the ERISA’s civil enforcement provision, § 502(a). Plaintiffs did not direct any argument or case law to this issue in their motion. Again, this provision states in pertinent part that “a civil action may be brought ... by a participant or beneficiary ... to recover benefits due to him under the terms of his plan.” 29 U.S.C. § 1132(a). This action falls neatly within this enforcement provision, since suit is being brought by plan beneficiaries who seek to recover the cost of medical bills due as benefits under the terms of the plan that Plaintiffs allege was – or should have been – applied to them at that time.

Because the “comprehensive civil enforcement scheme established by Congress represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans,” the Court in Ingersoll-Rand also concluded that ERISA preempts state laws that effectively provide alternate enforcement mechanisms. Ingersoll-Rand, 498 U.S. at 142-145 (quoting Pilot Life v. Dedeaux,

481 U.S. 41, 54 (1987)(citations omitted). The claims asserted by Plaintiffs are such state laws. As a result, the Court finds that Plaintiffs claims are preempted by this ERISA provision as well. Therefore, this matter is subject to complete preemption and removal under Metropolitan Life.

IV. CONCLUSION

The Court finds that removal of this matter to this Court was proper pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 because the state common law claims asserted by Plaintiffs are completely preempted by ERISA. For this reason, Plaintiffs' motion for remand is denied.

An appropriate order follows.

