

The court has removal jurisdiction pursuant to 28 U.S.C. § 1441(a) if, as defendant contends, plaintiffs' claims are subject to complete preemption under ERISA. See 29 U.S.C. § 1144(a); Lazorko v. Pennsylvania Hosp., 237 F.3d 242, 247 (3d Cir. 2000).

Plaintiffs' claims are based on the alleged denial of benefits for medical services provided to the decedent by Pacific Coast Hospital. These benefits are allegedly due under the decedent's employer's employee health benefit plan. Plaintiffs argue that their claims nevertheless are not preempted by ERISA because by failing to respond to plaintiffs' letters "requesting payment of benefits and/or to discuss the matter in further detail" defendant "waiv[ed] their right to have these matters heard administratively and/or made it impossible to have an administrative scenario." Plaintiffs also contend that defendant failed to "exert its rights through ERISA" and thus waived any such claim of preemption. Plaintiffs cite no legal authority for these unusual contentions.² Defendant's refusal to respond to a request for payment of benefits can hardly affect preemption. Defendant also has expressly "exert[ed] its rights through ERISA" in the instant motion and could not in any event waive the express supersedure of state law by Congress.

2. Although defendant and plaintiff Miller are both Pennsylvania citizens and plaintiffs contend their state law claims are unpreempted and viable, they have never moved for a remand.

ERISA broadly preempts all state laws that "relate to any employee benefit plan." See 29 U.S.C. § 1144(a). This provision preempts both state common law and statutory causes of action. See Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48 (1987) (common law causes of action based on alleged improper processing of claim for benefits under employee benefits plan are clearly preempted). A law "relates to" an employee benefit plan if it has a connection with or reference to such a plan, even if it was not designed to affect such plans or does so only indirectly. See Ingersoll-Rand, 498 U.S. at 138; Shaw v. Delta Airlines, Inc., 463 U.S. 85, 97 (1983).

Plaintiffs' contract claim is for benefits allegedly due under decedent's employee benefit plan and is thus clearly preempted by ERISA. See Pane v. RCA Corp., 868 F.2d 631, 635 (3d Cir. 1989) (ERISA preempts state law contract claim which has "connection with or reference to" ERISA covered plan); Bedger v. Allied Signal Inc., 1998 WL 54411, *4 (E.D. Pa. Jan. 23, 1998) (breach of contract claim related to benefit plan preempted by ERISA). Plaintiffs also base their UTPCPL, fraud and bad faith claims on the alleged failure to provide benefits promised and owed. Courts have consistently held that like breach of contract claims, such unfair trade practices and bad faith claims are preempted by ERISA. See Ramirez v. Inter-Continental Hotels, 890 F.2d 760, 763-4 (5th Cir. 1989); Murphy v. Metropolitan Life

Ins. Co., 152 F. Supp. 2d 755, 757 (E.D. Pa. 2001) ("plaintiff's statutory law bad faith and consumer protection claims 'relate to' an employee benefit plan and are expressly preempted"); Cox v. Blue Cross and Blue Shield of Michigan, 869 F. Supp. 501, 503-04 (E.D. Mich. 1994); Schultze v. Thomas & Betts Corp., 1994 WL 410826, *2 (E.D. Pa. Aug. 4, 1994) (ERISA preempts claims for breach of contract, misrepresentation, unfair trade practices and wrongful refusal to provide benefits). Plaintiffs' claims are preempted by ERISA.³

When a plaintiff's claims are completely preempted by ERISA, dismissal without prejudice to assert an ERISA claim is an appropriate course. See Cecchanecchio v. Continental Cas. Co., 2001 WL 43783, *5 (E.D. Pa. Jan. 19, 2001) (dismissal with leave to file amended complaint with proper ERISA claim); Delong v. Teacher's Ins. and Annuity Ass'n, 2000 WL 426193, *5 (E.D. Pa. Mar. 29, 2000) (dismissal without prejudice to file an amended complaint with ERISA claim after exhaustion of administrative remedies). Such a claim would ordinarily relate back to the initial filing date for limitations purposes pursuant to Fed. R. Civ. P. 15(c)(2). In the instant case, however, defendant contends that any ERISA claim would be time-barred and otherwise deficient.

3. It appears that plaintiffs' § 8371 bad faith claim would also be preempted by the Pennsylvania Health Maintenance Organization Act. See 40 P.S. § 1560(a).

ERISA does not provide a statute of limitations. Courts thus apply the most analogous state statute. See Henglein v. Colt Indus., 260 F.3d 201, 208 (3d Cir. 2001); Gluck v. Unisys Corp., 960 F.2d 1168, 1179 (3d Cir. 1992). Defendant misquotes a sentence in Gluck to suggest that the applicable statute of limitations is three years and that the instant action was thus untimely initiated. Defendant states that "[t]he Third Circuit has held that claims for benefits past due are most analogous to claims under Pennsylvania's Wage Payment and Collection Law" which has a three-year limitations period. The Court in Gluck was actually discussing a claim for "payments" due and not "benefits." Id. at 1181.

Each of the seven circuit courts to address the issue has applied the statute of limitations for a state breach of contract action to a claim for benefits under ERISA. See Syed v. Hercules, Inc., 214 F.3d 155, 159 (3d Cir. 2000) (citing cases). The Third Circuit has at least suggested that the state statute of limitations for a contract action would apply to claims for benefits under 29 U.S.C. § 1132(a)(1)(B). See Connell v. Trustees of Pension Fund, 118 F.3d 154, 156 n.4 (3d Cir. 1997). Courts in this district have held that the state claim most analogous to a claim for denial of benefits due under the terms of an ERISA plan is a breach of contract claim. See Caruso v. Life Ins. Co. of N. Am., 2000 WL 876581, *2 (E.D. Pa. June 29, 2000); Crane v. Asbestos Workers Philadelphia Pension Plan, 1998

WL 151801, *1 n.4 (E.D. Pa. Apr. 1, 1998); Cohen v. Zarwin & Baum, P.C., 1993 WL 460795, *3 (E.D. Pa. Nov. 9, 1993). See also Meade v. Pension Appeals and Review Comm., 966 F.2d 190, 195 (6th Cir. 1992) ("courts have uniformly characterized § 1132(a)(1)(B) claims as breach of contract claims for purposes of determining the most analogous statute of limitations under state law").

Pennsylvania has a four-year statute of limitation for breach of contract claims. See 42 Pa. C.S.A. § 5525(8). Accordingly, plaintiffs had four years to file an ERISA claim from "the time when [they] first [knew] that the benefit has been infringed or removed." Caruso, 2000 WL 876581, *2. Plaintiffs never allege or otherwise indicate when they first became aware that benefits would be denied. Nevertheless, it is reasonable to assume that benefits would not be due before covered services were rendered. Even taking the last day of decedent's hospital stay, October 17, 1997, plaintiffs' claims would not be time barred. The four-year limitations period would not expire until October 17, 2001. It appears from the official state court docket that plaintiffs filed a writ of summons on December 22, 2000 which was served on January 24, 2001. Plaintiffs filed a complaint on March 5, 2001 which was not served. The complaint was reinstated on April 3, 2001 and defendant was served on April 17, 2001.

Defendant correctly notes that the writ was not timely served within the thirty days provided by Pa. R. Civ. P. 401(a), and that the statute of limitations continues to run when a writ of summons or complaint is not timely served. See Cohill v. Schults, 643 A.2d 121, 123 (Pa. Super. 1994). A writ or complaint, however, may be reinstated at any time within the limitations period. See Pa. R. Civ. P. 401(b)(2); Fox v. Thompson, 546 A.2d 1146, 1149 (Pa. Super. 1988). Plaintiffs' complaint was reinstated on April 3, 2001 and served two weeks later, all within the four-year limitations period.

ERISA benefit plans must provide administrative remedies for any participant or beneficiary whose claim for benefits is denied. See 29 U.S.C. § 1133; Molnar v. Wibbelt, 789 F.2d 244, 250 n.3 (3d Cir. 1986). To maintain a claim under ERISA, a plaintiff must first exhaust these administrative remedies unless he can prove irreparable harm would result, futility or denial of access to the administrative review process. See Weldon v. Kraft, Inc., 896 F.2d 793, 800 (3d Cir. 1990); Wolf v. National Shopmen Pension Fund, 728 F.2d 182, 185-86 (3d Cir. 1984); Brown v. Continental Baking Co., 891 F. Supp. 238, 241 (E.D. Pa. 1995). See also Watts v. Organogenesis, 30 F. Supp. 2d 101, 104 (D. Mass. 1998) (excusing exhaustion where claimant faces serious and imminent threat to life without services for which benefits are sought).

Defendant correctly argues that plaintiffs have not pled exhaustion. The argument is disingenuous, however, as plaintiffs have not pled an ERISA claim at all. It is not clear from the present record that plaintiffs will be unable to satisfy the exhaustion requirement.

Defendant's argument that plaintiffs' complaint must be dismissed with prejudice because they seek damages not available under ERISA is similarly disingenuous. Plaintiffs seek damages which are available under the preempted state law claims they have pled. They have not pled an ERISA claim. If they can and do, they will presumably seek relief which is provided by ERISA.

In support of its contention that decedent received her medical benefits under a contract between her employer and Aetna Life Insurance Company and not Aetna U.S. Healthcare, defendant submits a copy of a contract between decedent's employer and Aetna Life Insurance Company. Plaintiff has not responded to this argument or questioned the authenticity of the document. Nevertheless, the court cannot definitively determine from the present record the nature of the relationship between Aetna U.S. Healthcare and Aetna Life Insurance Company or whether the named defendant may have played some role in the administration of the plan. Moreover, even if plaintiffs have mistakenly named the wrong party, this would not be a ground for dismissal of their action with prejudice. Plaintiffs may be able to assert an ERISA

claim against Aetna Life Insurance Company, if it is the proper party, which could relate back under Fed. R. Civ. P. 15(c)(3).

Defendant's contention that Pacific Coast Hospital would not be a proper party to an ERISA action as it is not a "participant" or "beneficiary" as provided by § 1132(a)(1)(B) is well taken. In their brief, however, plaintiffs suggest that decedent's claims were assigned to Pacific Coast Hospital and that such could be alleged if leave to amend were granted. If the claim for benefits has in fact been assigned, of course, it would appear that Mr. Miller is the party without standing.

Accordingly, defendant's motion to dismiss will be granted. Plaintiff, however, will be afforded leave to amend to assert an ERISA claim insofar as such can be done in good faith consistent with the foregoing memorandum. An appropriate order will be entered.