

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

DONNA CAMPBELL, Administratrix of the : CIVIL ACTION  
Estate of William M. Campbell, III and :  
DONNA CAMPBELL, Individually :  
 :  
 :  
v. :  
 :  
PRUDENTIAL INSURANCE COMPANY :  
OF AMERICA, *et al.* : No. 01-5229

**MEMORANDUM**

Ludwig, J.

March 25, 2002

This is an action under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, for benefits alleged to be due under two life insurance plans, together with supplemental state law claims.<sup>1</sup> Defendants Prudential Insurance Company of America (Prudential) and UNUM Provident (UNUM)<sup>2</sup> separately move to

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<sup>1</sup> On October 15, 2001 defendant Prudential Insurance Company of America removed this action from the Court of Common Pleas of Philadelphia based on federal question jurisdiction. 28 U.S.C. § 1331. Plaintiff thereupon filed an amended complaint. The original complaint alleged state law claims based on the insurance policies.

According to the amended complaint, on September 1, 1998, while plaintiff's decedent was its employee, defendant The Progressions Institute of Fort Washington (Progressions), purchased a group life insurance policy from Prudential. Am. Cmplt. ¶ 7. In May 1999, plaintiff's decedent was injured and subsequently received worker's compensation benefits. Am. Cmplt. ¶ 10. The amended complaint alleges that on September 1, 1998, Progressions also purchased a group life insurance policy from UNUM. Am. Cmplt. ¶ 30. (However, a copy of the insurance policy, attached to the complaint, shows an effective date of November 1, 1999. Pl.'s Exh. C, at 3.) On September 21, 2000, plaintiff's decedent died. Am. Cmplt. ¶ 11. Both Provident and UNUM denied plaintiff's life insurance claims.

<sup>2</sup> Defendants Progressions and Progressions Institute of Fort Washington Benefits Plan have not appeared. On February 6, 2002, a default was entered and, on March 12, 2002, a default judgment.

dismiss the state law claims<sup>3</sup> based on ERISA preemption. Fed. R. Civ. P. 12(b)(6).<sup>4</sup> Prudential also moves to dismiss the ERISA claim<sup>5</sup> based on (1) lack of coverage at the time of death; (2) absence of a legal obligation to inform plaintiff's decedent about his conversion rights; and (3) failure to exhaust administrative remedies. Jurisdiction is federal question. 28 U.S.C. § 1331; 29 U.S.C. § 1002(1).

The motions will be ruled on as follows: Counts IV, V, VI, VII, VIII, and IX - granted; and count II - granted, with leave to amend; Count III - dismissed *sua sponte*, with leave to amend.

### **I. Counts IV, V, VI, VII, VIII, and IX (state law claims) - granted**

As pleaded in Count I of the amended complaint, which contains a jurisdictional statement, it is undisputed that the life insurance policies at issue here constitute "employee welfare benefit plans" governed by ERISA. See 29 U.S.C. § 1002 (1). Accordingly, plaintiff's claims for state law breach of contract, bad faith, and declaratory judgment are preempted and must be dismissed. Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 46, 107 S. Ct. 1549, 1552, 95 L.Ed. 2d 39 (1987) (Mississippi common law bad faith cause of action preempted by ERISA); Cannon v. The Vanguard Group, Inc., 1998 WL

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<sup>3</sup> Count IV (declaratory judgment v. Prudential), Count V (declaratory judgment v. UNUM), Count VI (breach of contract v. Prudential), Count VII (breach of contract v. UNUM), Count VIII (bad faith v. Prudential), and Count IX (bad faith v. UNUM).

<sup>4</sup> Under Fed. R. Civ. P. 12(b)(6), the complaint's allegations are accepted as true, all reasonable inferences are drawn in the light most favorable to plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would justify relief. Brown v. Philip Morris, Inc., 250 F.3d 789, 796 (3d Cir. 2001).

<sup>5</sup> Counts II (against Prudential) and III (against UNUM) are not expressly labeled ERISA claims. However, Count I, paragraph five of the amended complaint states that federal jurisdiction is based on ERISA; all the other counts set forth state law causes of action. Therefore, it may be inferred that these two claims arise under ERISA.

512935, at \*3 (E.D.Pa. 1998) (listing district court cases holding Pennsylvania bad faith insurance statute claims preempted by ERISA); Rallis v. Transworld Music Corporation, 1994 WL 96264 at \*2-\*4 (E.D.Pa. 1994) (claims for declaratory judgment, breach of contract, and violation of Pennsylvania bad faith insurance statute preempted by ERISA).

## **II. Counts II and III**

### **a. Count II: Lack of coverage - denied**

Lack of coverage involves a factual matter and is therefore more properly the subject of a summary judgment motion.<sup>6</sup> Plaintiff will be granted an opportunity to conduct limited discovery on this issue.

### **b. Count II: Conversion rights - denied**

Prudential asserts that only Progressions, as the plan administrator, may be held liable under ERISA for the alleged failure to advise plaintiff's decedent of his conversion rights.<sup>7</sup> In a case involving an insurer's failure to notify an insured of his

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<sup>6</sup> The Group Insurance Contract attached to the complaint does not contain a fixed termination date. Prudential's motion to dismiss attaches a copy of a Group Contract Holder Statement that says that coverage was terminated on October 31, 1999. See Prudential Exh. F. Prudential also submitted a copy of its denial letter, according to which Progressions canceled its group life insurance coverage on November 1, 1999. See Prudential Exh. G. Prudential argues that these documents may now be considered because they are indisputably authentic and plaintiff's claims are based on the documents. See Pension Benefit Guaranty Corp. v. White Consolidated Indus., 998 F.2d 1192, 1196 (3d Cir. 1993); Gurfein v. Sovereign Group, 826 F. Supp. 890, 898 (E.D.Pa. 1992) (documents "integral to the Plaintiffs' complaint" are properly reviewable on a Rule 12 (b)(6) motion.) It is questionable whether the claim and denial letters are integral to the complaint, for which reason plaintiff may take discovery relating to the attachments to Prudential's motion.

<sup>7</sup> This specific theory of liability is not expressly set forth in the amended complaint. However, plaintiff's reply to the motion states: "neither plaintiff nor decedent were ever advised of their right to continue coverage under The Prudential Insurance Company of America policy despite provisions in that policy to do so." Pl. Reply, at 2.

Prudential relies on 29 C.F.R. §2520.104b-2, which states that "the plan administrator of an employee benefit plan subject to the provisions of Part 1 of Title I shall furnish a copy of the summary plan description and statement of ERISA rights as provided in § 2520.102-3(t), to each participant covered under the plan." However, Section G of the Group Insurance Contract places the following responsibility on  
(continued...)

conversion rights, Plumb v. Fluid Pump Service, Inc., 124 F. 3d 849, 854 (7th Cir. 1997), the decision observed that "an insurer generally will not be held to be a fiduciary with respect to an activity unless the plan documents show that the insurer was responsible for that activity." In Eddy v. Colonial Life Ins. Co. of America, 919 F.2d 747, 752 (D.C. Cir. 1990), an insurer was found to have violated its fiduciary duty when, after inquiry, it did not give an insured complete and accurate information about his option to convert coverage. These cases suggest that there are circumstances in which an insurer may have a duty to give notice of conversion rights. Because Rule 12 (b)(6) dismissal is appropriate only if there is no set of facts that would entitle plaintiff to relief,<sup>8</sup> the motion as to this count will be denied.

**c. Counts II and III: Failure to exhaust administrative remedies - granted, with leave to amend**

Plaintiff will be permitted to amend Counts II and III to set forth specific claims under ERISA and to plead or otherwise deal with the issue of exhaustion.<sup>9</sup> If plaintiff has not yet exhausted remedies, as alleged by Prudential, this action will be placed in suspense pending completion of the administrative procedures, assuming plaintiff is required to do so under the Prudential and UNUM plans.

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<sup>7</sup>(...continued)

Prudential: "Prudential will give the Contract Holder an individual certificate to give each insured Employee. It will describe the Employee's coverage under the Group Contract. It will include (1) to whom Prudential pays benefits, (2) any protection and rights when insurance ends, and (3) claims rights and requirements."

<sup>8</sup> Brown v. Philip Morris, Inc., 250 F.3d at 796 (3d Cir. 2001).

<sup>9</sup> Although UNUM did not raise this issue, Count III will be dismissed without prejudice *sua sponte* inasmuch as exhaustion ordinarily is a jurisdictional prerequisite. Weldon v. Kraft., Inc., 896 F.2d 793, 800 (3d Cir. 1990) (citing Wolf v. National Shopmen Pension Fund, 728 F.2d 182, 185 (3d Cir. 1984).

**d. Count III: ERISA preemption of Count III - denied**

UNUM also moved to dismiss Count III based on ERISA preemption. However, as discussed in footnote 4, *supra*, this count will be deemed to have set forth an ERISA cause of action and not a state law claim.

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Edmund V. Ludwig, J.

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**ORDER**

AND NOW, this 25th day of March, 2002, in accordance with the accompanying memorandum, the following is ordered:

1. Counts IV, V, VI, VII, VIII and IX are dismissed.
2. Counts II and II are dismissed, with leave granted to plaintiff to file an amended complaint by April 8, 2002 setting forth or otherwise dealing with exhaustion of administrative remedies.
3. Rule 16 Conference - Tuesday, April 30, 2002 at 2:30 pm.
  - Scheduling
  - ResolutionCounsel are to discuss issues in depth beforehand.

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Edmund V. Ludwig, J