

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

TRACY ELLIS

v.

HARTFORD COMPREHENSIVE EMPLOYEE :

BENEFITS SERV. CO. and
DELAWARE MGMT. HOLDING INC. STD :
EMPLOYEE BENEFIT PLAN

NO. 02-CV-3623

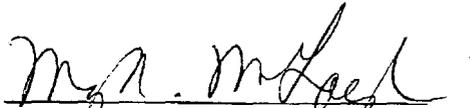
ORDER

AND NOW, this 25th day of October, 2002, upon consideration of Defendant Delaware Management Holding Incorporated STD Employee Benefit Plan's **Motion to Strike Plaintiff's** Demand for a **Trial** by Jury (Docket #4) and Plaintiff's Opposition thereto, as well as Defendant Hartford Comprehensive Employee Benefits Services' Motion to Strike Plaintiff's Demand for a Trial by Jury, included in its Motion to Dismiss the Plaintiff's Complaint (Docket #6), and **Plaintiff's response to** Hartford's motion in its Opposition to Defendant Hartford's Motion to Dismiss, it is hereby Ordered **that said** motions are Granted and the plaintiff's jury demand is stricken.

Because this court has dismissed the bad faith claim, only the claims brought under ERISA § 502(a), 29 U.S.C. § 1132(a), remain against the defendants. Since a claim under ERISA § 502(a) is equitable in nature, the plaintiff is not entitled to a jury trial. Pane v. RCA Corp., 868 F.2d 631, 637 (3d Cir. 1989); see also Rallis v. Trans World Music Corp., 93-CV-6100, 1994 U.S. Dist. LEXIS 3514 at *13 (E.D. Pa. 1994) (following Pane to strike a jury demand for a claim brought under ERISA § 502(a)(1)(B)).

The plaintiff agrees with this principle. Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Strike Demand for Jury Trial at 1 ("[B]ecause ERISA provides only equitable remedies, jury trial is not permitted. ...[] Plaintiff does not disagree with [defendant's] proposition with regards to the adjudication of ERISA.")

BY THE COURT:


MARY A. MCLAUGHLIN, J.

10/25/07 filed to: B. O'Connell
J. Wetzel
xc: D. Abrona

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

TRACY ELLIS

v.

:
:
.

HARTFORD COMPREHENSIVE EMPLOYEE :
BENEFITS SERV. CO. and
DELAWARE MGMT. HOLDING INC. STD :
EMPLOYEE **BENEFIT PLAN**

NO. 02-CV-3623

ORDER

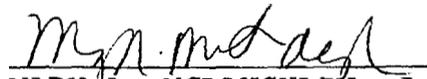
AND NOW, this 25th day of October, 2002, upon
consideration of Defendant Hartford Comprehensive Employee
Benefits Services Company's Motion to Dismiss Count II of
Plaintiff's Complaint (Docket #6), the Plaintiff's Opposition to
the Defendant's Motion to Dismiss, and Defendant's Reply
Memorandum in Support of its Motion to Dismiss, it is hereby
Ordered that said motion is Granted.

I agree with four of my colleagues who recently decided
that a state law bad faith claim under 42 Pa. C.S.A. § 8371 is
preempted by ERISA. ~~Smith v. Continental Cas. Co.~~, 2002 U.S.
Dist. LEXIS 18312 (E.D. Pa. Sept. 16, 2002); ~~Kirkhuff v. Lincoln~~
~~Tech. Inst.~~, 2002 U.S. Dist. LEXIS 17196 (E.D. Pa. Sept. 6,

2002); Bell v. UnumProvident Corp., 02-CV-2418 (E.D. Pa. Sept. 1, 2002); Sprecher v. Aetna U.S. Healthcare, 2002 WL 1917711 (E.D. Pa. Aug. 19, 2002). I will not restate the analysis presented so ably by my colleagues. I hold, along with Judge Waldman, that it "appears doubtful" that § 8371 falls within ERISA's savings clause. Assuming arguendo that it does, the law is categorically preempted by ERISA. Smith v. Continental Cas. Co., 2002 U.S. Dist. LEXIS 18312 (E.D. Pa. Sept. 16, 2002).

The Court will not decide the second issue raised by the motion - whether or not the defendant meets the definition of an insurer.

BY THE COURT:


MARY A. MCLAUGHLIN, J.

10/25/02 faxed to: B. O'Connell
J. Wetchler
xc: J. Abiona