

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

RICHARD STEVENS, : CIVIL ACTION
Plaintiff :
 :
V. :
 :
STANDARD INSURANCE COMPANY, :
Defendant : NO. 02-6597

ORDER

AND NOW, this 4th day of December, 2002, upon consideration of the defendant's motion to dismiss counts three and four of the plaintiff's complaint (Docket # 3), the plaintiff's response thereto, and the defendant's reply, it is hereby ORDERED that said motion is GRANTED for the following reasons.

The question raised by the defendant's motion is whether ERISA preempts the plaintiff's two state law claims. ERISA preempts all state laws that "relate to" any employee benefit plan. 29 U.S.C. § 1144(a). A law can relate to an employee benefit plan even when the law is of general application and not specifically designed to affect employee benefit plans. For example, state common law tort and contract actions have been preempted by ERISA when the causes of action have a "connection with or reference to" the plan. See, e.g., Metro. Life Ins. Co.

v. Tavlör, 481 U.S. 58, 62-63 (1986); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48 (1987).

A state law "which regulates insurance, banking, or securities" is not preempted because it fits within ERISA's "savings clause." 29 U.S.C. § 1144(b) (2)(A). Even if a state law fits within the "savings clause," the state law is categorically preempted if it allows a plaintiff "to obtain remedies under state law that Congress rejected in ERISA." Pilot Life Ins. Co. v. Dedeaux, 481 U.S. at 54.

Count three of the plaintiff's complaint is a state unfair trade practices claim brought under 73 Pa. Cons. Stat. Ann. § 201-9.2. This claim "relates to" the employee benefit plan because the claim is based on the insurance company's failure to pay benefits that the plaintiff thought he should receive. The claim is similar to the tort and contract actions brought by the plaintiff in Pilot Life. In Pilot Life, the plaintiff sued in tort and contract based on improper processing of a claim for benefits under an employee benefit plan. In both the present case and Pilot Life, the plaintiff's state law claim is based on an insurance company's failure to pay. This is a "connection with or reference to" the employee benefit plan satisfying the ERISA preemption clause's "relates to" requirement.

Because the unfair trade practices claim relates to an employee benefit plan, it is preempted unless it fits within the "savings clause." For a law to fit within the "savings clause," it must be "specifically directed toward [the insurance] industry" taking a "common sense view of the matter." Rush Prudential HMO, Inc. v. Moran, 122 S. Ct. 2151, 2158 (2002).

The Pennsylvania unfair trade practices law is not within the "savings clause" because it is not directed specifically at the insurance industry. The law prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, not just insurance. Pa. Cons. Stat. Ann. §§ 201-2 and 201-3. The law, therefore, is preempted by ERISA.

Count four of the plaintiff's complaint is also preempted by ERISA. This count is a state law bad faith claim brought under 42 Pa. Cons. Stat. Ann. § 8371. I agree with four of my colleagues who have recently decided that this claim is preempted by ERISA. See Smith v. Cont'l 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 Section 8371 falls within ERISA's savings clause. Assuming arguendo that it does, the law is categorically preempted by ERISA. Smith v. Cont'l Cas. Co., 2002 U.S. Dist. LEXIS 18312 (E.D.Pa. Sept. 16, 2002).

BY THE COURT:



MARY A. McLAUGHLIN, J.

dated 12/4/02:

J. Clark

J.E. Paltell

H. Stevens

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

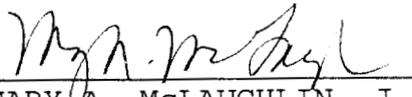
RICHARD STEVENS, : CIVIL ACTION
Plaintiff :
 :
v. :
 :
STANDARD INSURANCE COMPANY, :
Defendant : NO. 02-6597

ORDER

AND NOW, this 6th day of December, 2002,

following the dismissal of the plaintiff's two state law claims,
it is hereby ORDERED that the Clerk's Office shall remove this
case from the standard case management track to the arbitration
track.

BY THE COURT:



MARY A. McLAUGHLIN, J.

faxed 12/4/02:
O. Clark
E. Paltell
R. Stevens