

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

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|-------------------------|---|----------------|
| JOANN DOLCE, | : | CIVIL ACTION |
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| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| HERCULES INC. INSURANCE | : | |
| PLAN, et al., | : | NO. 03-CV-1747 |
| | : | |
| Defendants. | : | |

MEMORANDUM AND ORDER

Presently before this Court is Defendants’ Motion to Dismiss Count II of Plaintiff’s Complaint (Dkt. No. 7) in which Plaintiff alleges that Defendants improperly denied her application for long-term disability benefits and, in doing so, violated Pennsylvania’s bad faith statute, 42 Pa. Cons. Stat. Ann. § 8371. For the reasons discussed below, Defendants’ Motion is **GRANTED**.

I. Factual Background and Procedural History

Defendant Life Insurance Company of North America (“Life Insurance”) provided long-term disability insurance (the “Policy”) to Plaintiff Joann Dolce under Defendant Hercules, Inc. Insurance Plan, an employee benefit plan maintained by her employer, Hercules, Inc. (“Hercules”). Under the terms of the Policy, Life Insurance is obligated to pay long-term disability benefits if an insured, solely due to injury or sickness, is either “unable to perform all the material duties of any occupation for which [he or she is], or may reasonably become, qualified based on education, training or experience; or unable to earn 80% or more of [his or her] Indexed Covered Earnings.” Compl., Ex. A at 14.

In November 2000, as a result of symptoms associated with rheumatoid arthritis, Plaintiff could no longer perform her duties as Hercules' Director of Corporate Insurance. She applied for short-term disability benefits under the Policy. Plaintiff's application was approved and, as a result, she received 100% of her base monthly salary for twenty-six weeks beginning November 28, 2000. During that time, Plaintiff was under the care of her rheumatologist, Dr. Gary V. Gordon.

On February 28, 2001, Plaintiff applied for long-term disability benefits under the Policy. On May 25, 2001, Defendant CIGNA Corporation ("CIGNA"),¹ the parent company of Life Insurance, informed Plaintiff that her claim had been denied. Compl., Ex. B. Plaintiff appealed CIGNA's denial. Compl., Ex. C. She provided CIGNA with information from Dr. Gordon and other medical providers supporting her claim that she was unable to perform the duties of her job. Compl., Exs. D & E. On March 26, 2002, CIGNA informed Plaintiff that it had reaffirmed its decision to deny her claim. Compl., Ex. G.

Plaintiff requested an appeal of the March 26 reaffirmation. Compl., Ex. H. CIGNA notified Plaintiff that although the Policy did not provide for a process to appeal that decision, it would "accept voluntary appeals when they contain additional information that was not considered in the prior appeal." Compl., Ex. I. On December 23, 2002, Plaintiff provided CIGNA with two reports from Dr. John S. Bomalaski, a board-certified rheumatologist who examined Plaintiff, and requested that CIGNA reconsider her claim. Compl., Ex. J. On January

¹ On April 16, 2003, Plaintiff filed a Notice of Dismissal of Defendant, CIGNA Corporation. (Dkt. No. 4).

8, 2003, after reviewing Dr. Bomalaski's reports, CIGNA informed Plaintiff that it had reaffirmed its previous denials of her claim. Compl., Ex. L.

On March 25, 2003, Plaintiff filed a two-count complaint against Hercules, Inc. Insurance Plan, Life Insurance, and CIGNA. (Dkt. No. 1) Count I alleges that Defendants denied Plaintiff's claim for long-term disability benefits in violation of Section 502(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a). Count II alleges that Defendants' actions violated Pennsylvania's bad faith statute, 42 Pa. Cons. Stat. Ann. § 8371.

Defendants Hercules, Inc. Insurance Plan and Life Insurance (collectively, "Defendants") filed a Motion to Dismiss Count II of the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. No. 7). Relying on Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 107 S.Ct. 1549 (1987) and several district court cases within the Third Circuit, Defendants argue that ERISA preempts Plaintiff's Section 8371 claim. Defendants' Brief in Support of Its Motion to Dismiss Count II of the Complaint 6-16; Defendants' Reply Brief in Support of Its Motion to Dismiss Count II of the Complaint 1-15 (Dkt. No. 9). Plaintiff responds that ERISA's saving clause exempts Section 8371 from preemption under Rosenbaum v. UNUM Life Ins. Co. of Am., No. Civ. A. 01-6758, 2002 WL 1769899 (E.D. Pa. July 29, 2002). Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss 1-4 (Dkt. No. 8). Thus, the sole issue before this Court is whether a claim under Section 8371 is preempted by ERISA.

II. Standard of Review

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of a claim. See Markowitz v. Northeast Land Co., 906 F.2d

100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In considering a motion to dismiss, the court must accept as true all factual allegations of the complaint and draw all reasonable inferences in the light most favorable to the plaintiff. Board of Trs. of Bricklayers and Allied Craftsmen Local 6 of N.J. v. Wettlin Assoc., Inc., 237 F.3d 270, 272 (3d Cir. 2001). A court therefore “may dismiss a [claim] only if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations.” Ramadan v. Chase Manhattan Corp., 229 F.3d 194, 195-96 (3d Cir. 2000) (citing Alexander v. Whitman, 114 F.3d 1392, 1398 (3d Cir. 1997)).

III. Analysis

ERISA’s preemption clause provides: “Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . .” 29 U.S.C. § 1144(a). A law “relates to” an employee benefit plan if it has a connection with or reference to such a plan, even if the law was not designed to affect such plans or does so only indirectly. See Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138, S.Ct. (1990); Shaw v. Delta Airlines, Inc., 463 U.S. 85, 97, S.Ct. (1983). There is no dispute that the Pennsylvania bad faith statute relates to employee benefit plans and, therefore, falls within ERISA’s broad preemption clause.

ERISA’s saving clause, however, exempts from preemption “any law of any State which regulates insurance.” 29 U.S.C. § 1144(b)(2)(A). Prior to its recent decision in Kentucky Ass’n of Health Plans, Inc. v. Miller, 123 S.Ct. 1471 (2003), the Supreme Court established a multi-factor test for determining whether a state law falls within ERISA’s saving clause. See

Metro. Life Ins. v. Massachusetts, 471 U.S. 724 (1985). The first inquiry was whether, from a “common-sense view of the matter,” the law regulates insurance. Id. at 740. The second inquiry focused on the McCarran-Ferguson factors: “[F]irst whether the practice has the effect of transferring or spreading a policyholder’s risk; second, whether the practice is an integral part of the policy relationship between the insurer and the insured; and third, whether the practice is limited to entities within the insurance industry.” Id. at 743. The Supreme Court made clear in UNUM Life Ins. Co. of Am. v. Ward, 526 U.S. 358 (1999), that a state law need not satisfy all three McCarran-Ferguson factors to “regulate insurance” within the meaning of the saving clause. Rather, the factors were “considerations to be weighed” in making a saving clause determination. Id. at 373.

Relying on UNUM Life, Judge Newcomer held in Rosenbaum that Pennsylvania’s bad faith statute “is not preempted by ERISA as it falls under ERISA’s savings clause.” Rosenbaum, 2002 WL 1769899, at *3. Specifically, Judge Newcomer found that Section 8371 regulates insurance from a common-sense view of the matter and factors two and three of the McCarran-Ferguson factors were satisfied.² Id. In Miller, however, the Supreme

² Although Judge Newcomer’s opinion marked a departure from past decisions in this district, Sprecher, 2002 WL 1917711, at *3 (Prior to Rosenbaum, “[d]istrict courts in the Eastern District of Pennsylvania ha[d] consistently held that Pennsylvania’s bad faith statute is preempted by ERISA.”), it has not changed the landscape. Four Eastern District judges have recently issued opinions disagreeing with Rosenbaum and reenforcing the well-established proposition that Section 8371 is preempted by ERISA. Id.; Kirkhuff v. Lincoln Technical Inst. Inc., 221 F. Supp. 2d 572, 575-76 (E.D. Pa. 2002); Bell v. Unumprovident Corp., 222 F. Supp. 2d 692, 697-98 (E.D. Pa. 2002); McGuigan v. Reliance Standard Life Ins. Co., 256 F. Supp. 2d 345, 347-48 (E.D. Pa. 2002); Morales-Ceballos v. First UNUM Life Ins. Co. of Am., No. Civ. A. 03-CV-925, 2003 WL 22097493, at *2 (E.D. Pa. May 27, 2003).

Court made “a clean break from the McCarran-Ferguson factors” and “h[e]ld that for a state law to be deemed a ‘law . . . which regulates insurance’ under § 1144(b)(2)(A), it must satisfy two requirements. First, the state law must be specifically directed toward entities engaged in insurance. Second, . . . the state law must substantially affect the risk pooling arrangement between the insurer and the insured.” Miller, 123 S.Ct. at 1479.

A. Section 8371 is Specifically Directed Toward Entities Engaged in Insurance.

The Pennsylvania bad faith statute provides:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

42 Pa. Cons. Stat. Ann. § 8371 (West 1998). Section 8371 is clearly directed toward the insurance industry, as the statute is limited to “action[s] arising under an insurance policy.” Id.; see also Rosenbaum, 2002 WL 1769899, at *2 (holding that the Pennsylvania’s bad faith statute clearly regulates insurance and is specific to the insurance industry); Sprecher, 2002 WL 1917711, at *4 (“[Section] 8371 is applicable only to insurers in actions arising under an insurance policy.”); Kirkhuff, 221 F. Supp. 2d at 574 (“[O]ne need only look at [Section 8371’s] language” to conclude that the “Pennsylvania bad faith statute is directed specifically toward the insurance industry.”); McGuigan, 256 F. Supp. 2d at 347. Moreover, Section 8371 “is never applied outside the insurance industry.” Sprecher, 2002 WL 1917711, at *4; see also Bell, 222 F.

Supp. 2d at 697 (Section 8371 “is applicable only to insurers in actions arising under an insurance policy and is never applied outside the insurance industry.”). Therefore, Pennsylvania’s bad faith statute satisfies the first prong of the Miller test.

B. Section 8371 Does Not Substantially Affect the Risk Pooling Arrangement Between the Insurer and the Insured.

Like the Mississippi bad faith statute examined in Pilot Life, Section 8371 does not have the effect of transferring or spreading policy holder risk. Pilot Life, 481 U.S. at 50, 107 S.Ct. at 1549; see also Sprecher, 2002 WL 1917711, at *4 (finding that “Pennsylvania’s bad faith statute does not serve to spread the policyholder’s risk”); Bell, 222 F. Supp. 2d at 698 (same); McGuigan, 256 F. Supp. 2d at 348 (same); Morales-Ceballos, 2003 WL 22097493, at *2 (same). Rather, it provides the policy holder with a new cause of action and additional remedies against the insurer for a breach of an existing obligation under the policy. See Tutolo v. Independence Blue Cross, No. Civ. A. 98-5928, 1999 WL 274975, at *3 (E.D. Pa., May 5, 1999) (Section 8371 “provides the policy holder with a remedy against the insurer” and “is not an integral part of the insurer-insured relationship”). Even Judge Newcomer in Rosenbaum, upon which Plaintiff heavily relies, recognized that Pennsylvania’s bad faith statute does not satisfy the second prong of the Miller test: “Because it serves solely as a special damages section, it is doubtful that the provisions of § 8371 spread a policy holder’s risk.” Rosenbaum, 2002 WL 1769899, at *2 (examining Pennsylvania’s bad faith statute under the then applicable first McCarran-Ferguson factor, which is virtually identical to the second prong of the Miller test); see also Ercole v. Conective and Coventry Health Care of Del., Inc., No. Civ. A. 03-186 GMS, 2003 WL 21104926, at *2 (D. Del. May 15, 2003) (applying the Miller test and citing Rosenbaum, the

court held that Delaware’s bad faith statute “does not substantially affect risk pooling between insurer and insured,” but rather, “simply provides extra-contractual damages not permitted by ERISA”). Accordingly, we find that Section 8371 fails to satisfy the second prong of the Miller test.

C. Section 8371 Provides Remedies in Addition to ERISA’s Remedial Scheme.

Because Section 8371 fails to satisfy both prongs of the Miller test, the statute does not fall within ERISA’s saving clause. Miller, 123 S.Ct. at 1479. Even assuming arguendo that it does, Section 8371 is in any event preempted.

In Rush Prudential HMO, Inc. v. Moran, 122 S.Ct. 2151 (2002), the Supreme Court left intact and indeed reinforced its pronouncement in Pilot Life that Congress intended ERISA’s comprehensive civil enforcement provisions to be the exclusive remedies in actions brought by ERISA-plan participants and beneficiaries. Pilot Life, 481 U.S. at 54, 107 S.Ct. at 1549.³ The Court in Rush, recognizing that some laws which fall within the saving clause may nevertheless conflict with ERISA’s exclusive enforcement scheme, stated that:

[a]lthough we have yet to encounter a forced choice between the congressional policies of exclusively federal remedies and the “reservation of the business of insurance to the States,” we have anticipated such a conflict, with the state insurance regulation losing

³ The Mississippi bad faith statute in Pilot Life, unlike Section 8371, affected entities beyond those in the insurance industry and, as a result, did not fall within the saving clause. This distinction, however, does not render less forceful the Supreme Court’s pronouncements in Pilot Life and Rush that the preemptive effect of ERISA is broad with respect to remedies. See Kirkhuff, 221 F. Supp. 2d at 576 (“In our view, the Supreme Court’s decision [in Pilot Life] would have been the same even if Mississippi had had a narrower law. Otherwise a state could easily circumvent Pilot Life and ERISA by passing a specific statute like [Section 8371]. . .”).

out if it allows plan participants “to obtain remedies under state law that Congress rejected in ERISA.”

Id. at 2165 (citing Pilot Life, 481 U.S. at 54).

ERISA’s civil enforcement provisions allow an ERISA-plan participant to recover benefits, obtain a declaratory judgment that he or she is entitled to benefits, and to enjoin an improper refusal to pay benefits. 29 U.S.C. § 1132(a). Section 502(a) also allows an ERISA-plan participant to seek attorneys’ fees and costs. Id. Pennsylvania’s bad faith statute, on the other hand, allows an ERISA-plan participant to recover punitive damages for bad faith conduct, thus “expand[ing] the potential scope of ultimate liability imposed upon employers by the ERISA scheme.” Sprecher, 2002 WL 1917711, at *7. Because Section 8731 provides a form of relief in addition to the remedies provided by ERISA, the statute is incompatible with ERISA’s enforcement scheme and is preempted under Pilot Life.

IV. Conclusion

Accordingly, Defendants’ motion is granted. An appropriate order follows.

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| HERCULES INC. INSURANCE | : | |
| PLAN, et al., | : | NO. 03-CV-6140 |
| | : | |
| Defendants. | : | |

ORDER

AND NOW, this day of December, 2003, upon consideration of Defendants' Motion to Dismiss Count II of the Complaint (Dkt. No.7), and Plaintiff's response in opposition thereto, it is hereby ORDERED that Defendants' Motion is GRANTED and Count II of Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

BY THE COURT:

Legrome D. Davis, J.