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

MARYANN P. MCBRIDE,	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 05-6172
HARTFORD LIFE AND ACCIDENT	:	
INSURANCE COMPANY	:	
Defendant.	:	

MEMORANDUM AND ORDER

YOHN, J. February _____, 2006

Plaintiff Maryann P. McBride has filed this employee benefit action against defendant Hartford Life and Accident Insurance Company, alleging she has been wrongfully denied certain disability benefits under an employee benefit plan covered by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* ("ERISA"). In addition to alleging violations of ERISA,[1] plaintiff asserts that defendant violated Pennsylvania's Wage Payment and Collection Law, 43 Pa.C.S.A § 2901.1, *et. seq.* ("WPCL"), Pennsylvania's Bad Faith Insurance Statute, 42 Pa.C.S.A. § 8371, and the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"). Defendant has filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6), arguing that the state law claims are preempted by ERISA and the RICO allegations fail to state a claim upon which relief can be granted.[2] I will grant defendant's motion to dismiss.

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[1]While Count I of plaintiff's complaint may be construed as a state law breach of contract claim, both parties have agreed to construe Count I as an ERISA claim for the wrongful denial of benefits.

[2]Originally, defendants also moved to dismiss Count I of the complaint, construing Count I as a state law breach of contract claim that was preempted by ERISA. However, because the parties have since agreed to construe Count I as an ERISA claim, I will deny as moot defendant's motion to dismiss Count I.

I. DISCUSSION

A. Standard for Fed. R. Civ. P. 12(b)(6) Motion

When deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court is testing the sufficiency of a complaint. *Johnsrud v. Carter*, 620 F.2d 29, 33 (3d Cir. 1980) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In making its ruling, the court must accept as true all well-pled allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, to determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996); *Colburn v. Upper Darby Township*, 838 F.2d 663, 665–66 (3d Cir. 1988) (citations omitted). "The issue is not whether [the claimant] will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997). Courts will grant a motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

B. Preemption of State Law Claims by ERISA

Count II and III of plaintiff's complaint allege that defendant has violated Pennsylvania's WPCL and Bad Faith Insurance Statute by denying her benefits allegedly due under an ERISA-qualified employee benefit plan.[3] However, I will dismiss plaintiff's state law claims because they are preempted by ERISA.

Section 1144(a) of ERISA provides that ERISA's provisions supersede "any and all state

[3]The parties do not dispute that plaintiff's employee benefit plan is an ERISA plan. Mot. to Dismiss 7; Mem. Contra Dismissal 3.

laws insofar as they may or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). This preemption is "deliberately expansive." *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 45 (1987). The Third Circuit has held that ERISA preempts a plaintiff's WPCL and Bad Faith Insurance Statute claims insofar as they relate to employer benefit plans covered by ERISA.[4] *See McMahon v. McDowell*, 794 F.2d 100, 106 (3d Cir. 1986) (holding ERISA preempts WPCL claims for recovery of pension contributions and fringe benefits, items that plainly "relate to" employer pension funds covered by ERISA); *Pendleton v. Regent Nat'l Bank*, 1998 U.S. Dist. LEXIS 8706, *5-6 (E.D. Pa. June 14, 1998) (determining plaintiff's WPCL claim for disability benefits is preempted by ERISA); *Feret v. Corestates Fin. Corp.*, 1998 U.S. Dist. LEXIS 11512, *25 (E.D. Pa. July 27, 1998) (concluding plaintiff's WPCL claim for unpaid short term disability benefits is preempted by ERISA); *Aetna Health, Inc. v. Davila*, 542 U.S. 200, 210 (2004) (ruling that ERISA preempts bad faith insurance claims based on ERISA benefit plans); *Barber*, 383 F.3d at 141 (holding that ERISA unequivocally preempts Pennsylvania's Bad Faith Insurance Statute). According to the Third Circuit, a state law claim relates to an ERISA employee benefit plan if: (1) the existence of an ERISA plan is critical to establishing liability; and (2) the court's inquiry would be directed to the plan. *See 1975 Salaried Retirement Plan v. Nobers*, 968 F.2d 401, 406 (3d Cir. 1992).

In this case, plaintiff's allegations under the WPCL and Bad Faith Insurance Statute

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[4]Citing 29 U.S.C. § 1144(b)(2), plaintiff argues that ERISA does not preempt statutes that regulate insurance, including Pennsylvania's Bad Faith Insurance Statute. However, the Third Circuit has expressly ruled that even if the Bad Faith Insurance Statute regulates insurance "it would still be preempted because the punitive damages remedy supplements ERISA's exclusive remedial scheme." *Barber v. UNUM Life Insurance Company of America*, 383 F.3d 134, 141 (3d Cir. 2004). Thus, plaintiff's argument on this point is without merit.

amount to claims for the denial of disability benefits, items which plainly "relate to" plaintiff's ERISA employee benefit plan. Here, the existence of an ERISA plan is critical to establishing liability because the court would be unable to determine any recovery amount without reference to the ERISA benefit plan and its provisions. The court's inquiry would, by necessity, be directed to the ERISA plan. Therefore, plaintiff's state law claims are preempted by ERISA and will be dismissed.

C. Plaintiff's RICO Claim

In Count IV, McBride also attempts to set forth a RICO claim against Hartford. RICO provides a private civil action to recover treble damages for injuries resulting from a defendant's "racketeering activities." 18 U.S.C. § 1964(c). In order to state a claim for relief under RICO, plaintiff must allege injury to her business or property as a result of a violation of one of the four substantive provisions of 18 U.S.C. § 1962. *Id.* Section 1962 specifically outlaws: (1) the use of income derived from a pattern of racketeering activity to acquire an interest in or establish an enterprise engaged in or affecting interstate commerce, 18 U.S.C. § 1962(a); (2) the acquisition or maintenance of any interest in an enterprise through a pattern of racketeering activity, 18 U.S.C. § 1962(b); (3) conducting or participating in the conduct of an enterprise through a pattern of racketeering activity, 18 U.S.C. § 1962(c); and (4) conspiring to violate any of these provisions, 18 U.S.C. § 1962(d).[5]

[5] In relevant part, 18 U. S. C. § 1962 provides:

> (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities

Here, McBride alleges that Hartford engaged in a "pattern of racketeering activity" by committing mail fraud. Specifically, she asserts that Hartford sent her letters that fraudulently refused to pay the disability benefits due to her under her employee benefit plan. (Compl. ¶¶ 14, 16, & 41.) However, even accepting plaintiff's allegations as true, and drawing any reasonable inferences therefrom, her RICO allegations do not state a claim for relief because she has failed to allege a single violation of § 1962's substantive provisions.[6]

To state a RICO claim based on a violation of § 1962(a), a plaintiff must allege that: (1) the defendant received money from a pattern of racketeering activity; (2) invested that money in an enterprise; and (3) the enterprise affected interstate commerce. *Lightning Lube v. Witco Corp*., 4 F.3d 1153, 1188 (3d Cir. 1993); *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162, 1165 (3d Cir. 1989). However, McBride has completely failed to allege how Hartford obtained income from sending letters to plaintiff, how it used that income to acquire an interest in or

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> of which affect, interstate or foreign commerce. . . .
>
> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

[6]Because the complaint does not identify which of the four subsections of § 1962 was allegedly violated, I will address each in turn.

establish an enterprise, or who or what that enterprise was. Thus, plaintiff's allegations fail to state a RICO claim based on a § 1962(a) violation.

With regard to § 1962(b), "a plaintiff must allege a specific nexus between control of a named enterprise and the alleged racketeering activity." *Kehr Packages v. Fidelcor, Inc.*, 926 F.2d 1406, 1411 (3d Cir. 1991); *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162, 1168 n.2 (3d Cir. 1989). McBride has made absolutely no allegations regarding a nexus between Hartford's control of any other named enterprise, and the alleged mail fraud in which Hartford engaged. Consequently, she also fails to allege any violation of § 1962(b).

I reach the same result under § 1962(c). To state a RICO claim arising from a violation of 18 U.S.C. § 1962(c), a plaintiff must allege: "(1) the existence of an enterprise affecting interstate commerce; (2) that the defendant was employed by or associated with the enterprise; (3) that the defendant participated, either directly or indirectly, in the conduct or the affairs of the enterprise; and (4) that he or she participated through a pattern of racketeering activity that must include the allegation of at least two racketeering acts." *Shearin*, 885 F.2d at 1165. Furthermore, an entity cannot be both an enterprise and a defendant under § 1962(c). *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1411 (3d Cir. 1993); *B.F. Hirsch v. Enright Refining Co.*, 751 F.2d 628, 633 (3d Cir. 1984). Here, McBride has not alleged the existence of any separate organization other than Hartford. Consequently, she has failed to show how Hartford was associated with, or participated in conduct with, another organization. Thus, plaintiff's allegations fail to support a RICO claim based on a violation of § 1962(c).

Finally, to allege a RICO claim based on § 1962(d), a plaintiff must allege (1) an agreement to commit the predicate acts of fraud, and (2) knowledge that those acts were part of a

pattern of racketeering activity conducted in such a way as to violate § 1962(a), (b), or (c). *Rose v. Bartle*, 871 F.2d 331, 366 (3d Cir. 1989). As stated above, McBride has failed to allege how Hartford's activities in any way violated § 1962(a), (b), or (c). Furthermore, plaintiff's complaint is void of any allegations of an agreement or conspiracy to violate § 1962(a), (b), or (c) or even mail fraud. As such, plaintiff's allegations have failed to state a RICO claim based on § 1962(d).

Therefore, even accepting McBride's allegations as true, McBride has failed to allege a violation of any provision of § 1962 and consequently, her complaint fails to state a RICO claim upon which relief can be granted. Accordingly, Count IV of plaintiff's RICO claim will be dismissed.

II. CONCLUSION

For the foregoing reasons, I will grant defendant's motion to dismiss plaintiff's state law claims under the WPCL and the Bad Faith Insurance Statute because these claims are preempted by ERISA. In addition, I will grant defendant's motion to dismiss plaintiff's federal RICO claim because her allegations fail to state grounds for relief based on the federal RICO statute. An appropriate order follows.

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v.	:	
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HARTFORD LIFE AND ACCIDENT	:	
INSURANCE COMPANY	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of February, 2006, upon consideration of defendant's motion to dismiss for failure to state a claim upon which relief can be granted, filed pursuant to Fed. R. Civ. P. 12(b)(6), and plaintiff's response thereto, **IT IS HEREBY ORDERED THAT**:

1. Defendant's motion to dismiss Counts II, III, and IV of plaintiff's complaint is **GRANTED** and those claims are **DISMISSED**.

2. Defendant's motion to dismiss Count I of plaintiff's complaint is **DENIED** as moot in that the parties have agreed to construe Count I as an ERISA claim.

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William H. Yohn, Jr., Judge