

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

UFCW LOCAL 1776 and : CIVIL ACTION
PARTICIPATING EMPLOYERS HEALTH :
AND WELFARE FUND, et al. :
 :
v. :
 :
MARIE A. DEBOER, et al. : NO. 07-cv-00738-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

July 10, 2007

Plaintiffs are trustees under a multi-employer benefit plan, governed by ERISA. The defendants are a beneficiary under the plan, and her attorneys. The complaint alleges that the defendant beneficiary was involved in a couple of automobile accidents and, through the defendant attorneys, obtained recoveries from third parties. Plaintiffs claim to be entitled to subrogation against those recoveries, to the extent of benefits paid under the plan attributable to the accidents in question. Plaintiffs also allege that beneficiary was paid benefits to which she was not entitled under the terms of the plan, since she had retired.

The defendant attorneys have now filed a motion to dismiss certain counts of the complaint, on the theory that this court lacks subject-matter jurisdiction because ERISA fiduciaries such as these plaintiffs can properly pursue only equitable remedies, rather than legal remedies. The motion will be denied. The counts in question seek to impose an equitable lien and/or a

constructive trust upon funds allegedly held by the defendant attorneys, and alleged to be the property of the defendant beneficiary. The movants may ultimately prove to be correct, and the counts in question may fail on the merits, but, at this stage, I must assume that plaintiffs will be able to prove their case. The allegations of the amended complaint suffice to assert claims to equitable remedies, as recently clarified by the Supreme Court in Sereboff et ux. v. Mid Atlantic Medical Services, Inc., 547 U.S. ____ (May 15, 2006).

An Order follows.

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ORDER

AND NOW, this 10th day of July 2007, upon consideration of the motion of defendants Brett Tressler & Associates, P.C. and Brett Tressler, Esquire to dismiss Counts II and IV of the amended complaint, and plaintiffs' response, IT IS ORDERED:

That the motion is DENIED. The movants are required to respond to the amended complaint within 20 days.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.