

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

LEHIGH VALLEY HOSPITAL, : CIVIL ACTION
Plaintiff, :
 : NO. 94-3082
v. :
 :
TASIA RALLIS, :
Defendant, :
 :
v. :
 :
TRANSWORLD MUSIC CORP. :
ASSOCIATE BENEFIT PLAN, :
Additional Defendant. :

TASIA RALLIS, : CIVIL ACTION
Plaintiff, :
 : NO. 95-3511
v. :
 :
TRANSWORLD MUSIC CORP. :
ASSOCIATE BENEFIT PLAN, :
Defendant. :

M E M O R A N D U M

BUCKWALTER, J.

April 15, 1998

This case was remanded by the Court of Appeals "for the district court to decide whether Rallis was subject to a subrogation provision on January 1, 1993, and other matters appropriately brought before it."

To that end, a hearing was held on March 24, 1998.

It is undisputed that the employer in this case had provided a written plan document containing a subrogation provision within 120 days after the plan became subject to ERISA as required by 29 U.S.C. § 1024(b)(1). Thus, in accordance with

the law of this case, it is presumed that the written plan document accurately reflects the terms of the plan as it existed from the first day it became subject to ERISA, unless the participant (Rallis) comes forward with evidence to rebut that presumption.

At the hearing, therefore, it was Rallis' obligation to come forward with evidence to rebut the presumption. To this end, she offered (1) her own testimony; (2) that of Sandra Colon, whose testimony is not relevant to whether Rallis was subject to a subrogation provision on January 1, 1993; and (3) the deposition testimony of Bert C. Tobin. I now rule as a matter of law that the Rallis trial submissions are insufficient to rebut the presumption referred to above for the following reasons.

First, Ms. Rallis, unfortunately, claims to suffer from a loss of memory with regard to what transpired between her and Transworld concerning the new health plan to take effect on January 1, 1993. (See N/T, p. 25).

Secondly, Mr. Tobin's deposition testimony does not support plaintiff's allegation that there was no subrogation provision in the plan on January 1, 1993. Because he does not recall mention of subrogation during his negotiation with Traveler's Penn Administrators of Connecticut, Inc. (TPA) does not mean that the subrogation provision was not ultimately in the plan document. Moreover, even if the subrogation provision was

not referred to in the copies of proposed benefits given to district managers of Transworld prior to January 1, 1993, this omission does not rebut the presumption that the provision was not in the actual plan document.

Rallis relies on essentially the same evidence to support her claim of equitable estoppel. As a matter of law, it is clearly insufficient to establish the elements of that claim.

Although not necessary to my disposition of this case because I believe Rallis' evidence fails as a matter of law, I would note that the witness called by Transworld, Thomas McCaw, whose testimony I accept as credible, supports the presumption that the written plan document accurately reflects the terms of the plan as it existed on January 1, 1993.

McCaw, president of TPA, testified that Transworld solicited bids from several companies including his to be the claims administrator of the Transworld self-funded plan.

Ultimately, Transworld accepted TPA's bid. It was the practice of TPA to include subrogation provisions in plans for which it was plan administrator and did so in this case. He believes it was discussed with Tobin as part of a general presentation of TPA's services in the fall of 1992. He also testified that neither TPA nor Transworld added subrogation to the plan after January 1, 1993 and no one at TPA ever received an instruction from anyone at Transworld on or after January 1,

1993, to add a subrogation provision to the plan document or SPP because of Rallis' accident on that day.

It is clear to me that the subrogation clause in the plan document in this case was intended to be part of and included in the plan that went into effect on January 1, 1993. Rallis enrolled in the plan on November 30, 1992 and was subject to its subrogation provision when she had her accident on January 1, 1993.

Accordingly, the following order is entered:

O R D E R

AND NOW, this 15th day of April, 1998, judgment is entered in favor of defendant Transworld Music Corp. and against plaintiff Tasia Rallis. In addition, based upon the stipulation entered into by the parties, judgment is entered in favor of Lehigh Valley Hospital and against Tasia Rallis in the amount of \$218,981.55, together with statutory interest from April 30, 1993.

Civil Action Nos. 94-3082 and 95-3511 shall be marked **CLOSED.**

BY THE COURT:

RONALD L. BUCKWALTER, J.