

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

THOMAS BOSSERT AND STEVEN : CIVIL ACTION  
GARTENBERG, D.C., P.C. :  
 :  
v. :  
 :  
AETNA INSURANCE COMPANY : NO. 97-4369

M E M O R A N D U M

WALDMAN, J.

April 27, 1998

Presently before the court is defendant's motion to dismiss plaintiffs' complaint. Although afforded an extended time in which to do so, plaintiffs have not responded to the motion and it is thus uncontested.

Plaintiffs are suing for the payment of medical benefits they allege defendant has wrongfully withheld. Defendant removed this action from state court on the ground that plaintiff Bossert was a beneficiary under the policy at issue by virtue of his employment at Sun Company and that the policy provided by Sun was thus an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002. Plaintiffs never contested the removal of this action.<sup>1</sup>

In Count I of the complaint, plaintiff Bossert and an entity referred to as Community Chiropractic Center ("CCC")

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<sup>1</sup> Defendant asserts and plaintiffs do not dispute that the medical benefits plan at issue is a self funded plan provided to employees of Sun Company.

assert a claim for breach of contract by the defendant for failing to pay Mr. Bossert's medical bills. They also claim that defendant's refusal to provide coverage violated unspecified provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law ("PMVFL"), 75 Pa. C.S.A. § 1701 et seq. CCC is not a named plaintiff in this action and absolutely no information about it appears in the complaint from which one remotely can discern why its name appears in the caption of Count I.

In Count II, plaintiff claims that defendant's refusal to pay bills which were reasonable for necessary chiropractic treatment provided by Dr. Gartenberg to Mr. Bossert is a violation of the PMVFL, 75 Pa. C.S.A. § 1797, because defendant did so without invoking peer review.

Dismissal for failure to state a claim is appropriate when it clearly appears that a plaintiff can prove no set of facts to support his claim which would entitle him to the relief sought. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. 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). A complaint may be dismissed when the facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex. rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir.

1988).

The pertinent factual allegations are as follow.

Defendant AETNA provided medical insurance to plaintiff Bossert under a group plan with his employer, Sun Company. The terms of this plan provided "security secondary to automobile first party benefits" for Mr. Bossert. The pertinent policy was in effect on March 29, 1994.

On March 19, 1992, Mr. Bossert was injured in an automobile accident in Upper Darby, Pennsylvania. He obtained and incurred expenses for medical treatment as a result of his injuries. On August 19, 1992, Mr. Bossert exhausted his first party insurance benefits under his Liberty Mutual Insurance Company automobile policy. He then sought coverage for his medical expenses from defendant Aetna.<sup>2</sup>

Mr. Bossert provided Aetna on several occasions with proof of his medical expenses, losses and related costs incurred as a result of the accident. Aetna has never compensated plaintiff for these losses.

At various times in 1992, 1993 and 1994, plaintiff Gartenberg sent to Aetna reports and bills for services he provided to Mr. Bossert. Aetna replied to Dr. Gartenberg's letters on June 13, 1994 and August 15, 1994, refusing to provide

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<sup>2</sup> The PMVFRL provides that the statute of limitations for an action seeking to recover unpaid benefits is four years from the date of the accident giving rise to the claim or four years from the date of the last payment of first party benefits. See 75 Pa.C.S.A. 1721. Thus, based on the dates in the complaint, it appears that the statute of limitations on the PMVFRL claim began to run on August 19, 1992 and was time barred by the time this action was commenced.

coverage for these expenses.

As noted, except for its appearance in the caption to Count I, CCC is not identified or referred to anywhere else in the complaint. Insofar as it might conceivably be viewed as a proper plaintiff, CCC has clearly failed to state any cognizable claim against Aetna.

Defendant correctly contends that insofar as plaintiff seeks to assert a common law breach of contract claim against Aetna, it is clearly preempted by ERISA. ERISA broadly preempts all state laws that "relate to any employee benefit plan." See 29 U.S.C. § 1144(a). This provisions preempts both state common law and statutory causes of action. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987).

A law "relates to" an employee benefit plan if it has a connection with or reference to such a plan, even if it was not designed to affect such plans or does so only indirectly. Ingersoll-Rand, 498 U.S. at 138; Shaw v. Delta Airlines. Inc., 463 U.S. 85, 97 (1983). As plaintiffs' contract claim is for benefits allegedly due to plaintiff Bossert under his employee benefit plan, it is clearly related to that plan and is preempted by ERISA. See Pane v. RCA Corp., 868 F.2d 631, 635 (3d Cir. 1989) (ERISA preempts state law contract claim which has "connection with or reference to" ERISA covered plan); Bedger v. Allied Signal Inc., 1998 WL 54411, at \*4 (E.D. Pa. Jan. 23, 1998)(breach of contract claim related to benefit plan preempted by ERISA).



Plaintiffs' claim that defendant violated unspecified sections of the PMVFRL by not providing coverage for medical expenses incurred by Mr. Bossert as a result of his March 1992 automobile accident is also preempted by ERISA. See Travitz v. Northeast Dep't ILGWU Health and Welfare Fund, 13 F.3d 704, 710 (3d Cir.) ("any state statute that attempts to shift liability for medical and health care benefits to a plan, group contract, or other arrangement operating within the meaning of ERISA is preempted by it"), cert. denied, 511 U.S. 1143 (1994).

To maintain a claim under ERISA, a plaintiff must first exhaust his administrative remedies under his employee benefit plan unless he can demonstrate that he has been threatened with irreparable harm, that pursuit administrative remedies would be futile or that he was prevented from invoking the administrative review process. Weldon v. Kraft, Inc., 896 F.2d 793 (3d Cir. 1990); Wolf v. National Shopmen Pension Fund, 728 F.2d 182, 185 (3d Cir. 1984); Brown v. Continental Baking Co., 891 F. Supp. 238, 241 (E.D. Pa. 1995). Plaintiffs have not disputed defendant's contention that the plan in question provides administrative remedies and have not alleged that Mr. Bossert pursued those remedies or otherwise qualifies for one of the exceptions to the exhaustion requirement. Plaintiffs have not asserted an ERISA claim. Should they choose hereafter to do so, they may wish to keep this requirement in mind.

ERISA also preempts plaintiff Gartenberg's claim under § 1797, which prescribes administrative procedures by which an insurer may dispute a health care provider's charges and thus

relates to the administration of an employee benefit plan within the meaning of § 1144(a). See Ingersoll-Rand Co, 498 U.S. at 138. Insofar as plaintiff Gartenberg's claim might be construed as one for breach of contract, it would also be preempted by ERISA for reasons already noted.<sup>3</sup>

Accordingly, defendant's motion will be granted. An appropriate order will be entered.

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<sup>3</sup> As plaintiff Gartenberg has not asserted an ERISA claim against defendant, the court need not address defendant's argument that he lacks standing to bring such a claim. The court does note, however that there is no allegation that plaintiff Gartenberg is an assignee of Mr. Bossert and even if he is viewed as a third-party beneficiary, they may not each recover the benefits allegedly due.

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O R D E R

AND NOW, this            day of April, 1998, upon consideration of defendant's Motion to Dismiss and in the absence of any response by plaintiffs thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the above action is **DISMISSED**, without prejudice to pursue any relief available or assert any claim cognizable under ERISA.

BY THE COURT:

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JAY C. WALDMAN, J.