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

SPRING FORD INDUSTRIES, INC. and JAMES A. KONNICK	:	CIVIL ACTION
v.	:	
AETNA U.S. HEALTHCARE INC., et al.	:	NO. 98-3555

MEMORANDUM AND ORDER

Fullam, Sr. J. May , 2000

The defendant David Moore was an insurance broker who, in the course of his business, negotiated with health insurance companies to provide group health insurance for his clients' employees. One of these clients was the plaintiff Spring Ford Industries, Inc. After this arrangement had continued for some time, Spring Ford Industries hired Mr. Moore on a full-time basis to administer the health insurance program of its employees. Allegedly, Mr. Moore, without the knowledge or consent of Spring Ford Industries, continued to collect, and retain, a broker's commission on the policies he placed. Allegedly, Mr. Moore controlled the placement of the insurance by manipulating the deductibles. Plaintiff Spring Ford Industries claimed to have lost a great deal of money because of Mr. Moore's activities.

Plaintiff Spring Ford Industries brought this action against Mr. Moore and against Aetna U.S. Healthcare, Inc., successor to the company which allegedly paid Mr. Moore the

suspect commissions. Mr. Moore filed a third-party claim against Aetna U.S. Healthcare as well.

Spring Ford's complaint against Aetna U.S. Healthcare was dismissed with prejudice, without opposition from the plaintiff. The motion to dismiss had, properly, pointed out that Spring Ford Industries, Inc. was not a proper plaintiff, since it did not administer the health plan in question, and lacked standing to make an ERISA claim.

Thereafter, plaintiff filed an amended complaint, adding as a plaintiff a gentleman named James A. Konnick, alleged to be a participant in the health plan and therefore a proper plaintiff. But the amended complaint did not include any claims against Aetna U.S. Healthcare, Inc., on behalf of either plaintiff. Thus, at that point, this litigation involved only the claims of Spring Ford Industries and James A. Konnick against the defendant David Moore, and Moore's third-party complaint against Aetna U.S. Healthcare.

Thereafter, Spring Ford Industries, Inc. reached a settlement of its claims against Mr. Moore. Trial of the claims against the remaining parties was scheduled for April 24, 2000. On the eve of trial, plaintiffs sought leave to file another amended complaint. The proposed amendment would add a count charging Aetna U.S. Healthcare, Inc. with violation of 29 U.S.C. §1023, which deals with reporting requirements. Aetna opposed

the proffered amendment.

Plaintiffs' motion for leave to file a further amended complaint will be denied. The application comes much too late, having been filed on the very eve of trial, in a case nearly two years old. Moreover, the amendment would be futile. Plaintiffs have no claim for damages under 29 U.S.C. §1023. In some circumstances, they might be entitled to equitable relief, but it is clear that all of the information required to be supplied by §1023 has long since been supplied. Moreover, the alleged violations of §1023 occurred long ago, and the claims now sought to be asserted are obviously barred by the statute of limitations. And, as to plaintiff Spring Ford Industries, at least, the proposed amendment is barred by the earlier unopposed dismissal of the original complaint in that respect.

An Order follows.

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ORDER

AND NOW, this day of May 2000, upon consideration of plaintiffs' Motion to File an Amended Complaint, IT IS ORDERED:

That plaintiffs' motion is DENIED.

John P. Fullam, Sr. J.