

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

JACQUELYN PERAZZO and	:	CIVIL ACTION
ROBERT PERAZZO	:	
	:	
v.	:	
	:	
RELIANCE STANDARD LIFE INSURANCE	:	
COMPANY, and	:	
PHILADELPHIA PARKING AUTHORITY	:	NO. 00-3342

**MEMORANDUM AND ORDER**

HUTTON, J.

November 15, 2001

Presently before the Court are Defendant Reliance Standard Insurance Company's ("Reliance Standard") Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 14), Plaintiffs Jacquelyn Perazzo and Robert Perazzo's ("Plaintiffs") Response to Defendant Reliance Standard's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 15), Reply Brief in Support of Defendant Reliance Standard's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 16), Defendant Philadelphia Parking Authority's ("PPA") Sur-Reply to Defendant Reliance Standard's Motion to Dismiss (Docket No. 20), Defendant PPA's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 17), Plaintiffs' Response to Defendant PPA's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 18), and Defendant Reliance Standard's Response to Defendant PPA's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 19). After full

consideration of the arguments, Defendant Reliance Standard's motion is **DENIED**, and Defendant PPA's motion is **GRANTED**.

#### I. BACKGROUND

Plaintiffs Jacquelyn Perazzo and Robert Perazzo ("Plaintiffs"), filed the instant complaint against Defendants Reliance Standard Insurance Company ("Reliance Standard") and the Philadelphia Parking Authority ("PPA") on June 6, 2000 alleging that Reliance Standard wrongfully denied long term disability benefits to Plaintiff Jacquelyn Perazzo, a former employee of Defendant PPA. In their original complaint, Plaintiffs alleged a violation of a number of state law claims against Reliance Standard, including breach of contract, breach of good faith and fair dealing, breach of fiduciary duty, fraud, unfair trade practice, violation of the consumer protection act, and loss of consortium. On June 30, 2000, Reliance Standard successfully removed the case to this Court based upon Reliance Standard's allegations that Plaintiffs' claims were governed by the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 et seq. Defendant PPA then filed a Motion to Dismiss Plaintiffs' Complaint for failure to state grounds for relief under federal law.<sup>1</sup> On November 11, 2000, the Court granted

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<sup>1</sup> In their original complaint, Plaintiffs only alleged a fraud count against PPA.

Plaintiffs' leave to file an amended Complaint to include a claim under ERISA.

Plaintiffs' amended complaint set forth an ERISA and fraud claim against Defendant PPA, but Plaintiffs continued to allege only state law claims against Reliance Standard. In turn, Reliance Standard filed a motion to dismiss Plaintiffs' amended complaint, which this Court granted as uncontested on January 8, 2001. The Court then granted Plaintiffs' motion for reconsideration, and permitted Plaintiffs to file a second amended complaint. On May 18, 2001, Plaintiffs filed a second amended complaint that stated an ERISA claim against Reliance Standard, in addition to the state law claims originally pled.<sup>2</sup> Reliance Standard and PPA then filed Motions to Dismiss Plaintiffs' Second Amended Complaint on May 24, 2001 and July 6, 2001 respectively.

## **II. LEGAL STANDARD**

### **A. Standard for a Motion to Dismiss**

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set

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<sup>2</sup> The claims against Defendant PPA were unchanged in the Second Amendment Complaint.

of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrasso, 848 F.2d 398, 401 (3d Cir. 1988)); see also H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The Court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

The Court notes that PPA moves for dismissal of the instant case under Federal Rule of Civil Procedure 12(b)(6), failure to state a claim, as opposed to Federal Rule of Civil Procedure 12(b)(1), lack of subject matter jurisdiction. PPA's dispositive challenges, however, relate to whether this Court has subject matter jurisdiction over this action. A federal court has an obligation to address a question of subject matter jurisdiction sua sponte. See Meritcare v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999) (holding that a district court may "address the question of jurisdiction, even if the parties do not raise the issue") (quoting Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995)); Employers Ins. of Wausau v. Crown Cork & Seal Co., Inc., 905 F.2d 42, 45 (3d Cir. 1990). Moreover, the need to examine the court's jurisdiction is made explicit in removal cases, like the case at bar, where "if at any time before final judgment it appears that the district court lacks subject

matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the Court determines whether it has authority or competence to hear and decide the case. See 5 C. Wright & A. Miller, Federal Practice and Procedure, § 1350 at 543, 547. In deciding whether there is subject matter jurisdiction, affidavits and other matters outside the pleadings may be considered. See Mortenson v. First Fed. Sav. and Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977); 5 C. Wright & A. Miller, Federal Practice and Procedure, § 1350 at 549-50. As the Third Circuit stated in Mortenson, the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. 549 F.2d at 891. In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Id.

### **III. DISCUSSION**

Both Defendants now move this Court to dismiss Plaintiffs' Second Amended Complaint, but for conflicting reasons. Reliance Standard argues that Plaintiffs' Second Amended Complaint should be dismissed because ERISA governs the plan at issue, and thus preempts Plaintiffs' state law claims. See Def. Reliance Standard's Mot. to Dismiss at ¶ 11-12. Plaintiff does not object

to a dismissal of the state law claims, so long as Plaintiffs can proceed under ERISA. See Pls.' Resp. to Def. Reliance Standard's Mot. to Dismiss at 3. Conversely, PPA moves to dismiss Plaintiffs' complaint because the long term disability policy involved in this case is a "governmental plan" under 29 U.S.C. § 1002(32), and is therefore exempt from ERISA coverage. See Def. PPA's Mot. to Dismiss at 3. Accordingly, the issue before this Court is whether the long term disability policy issued by Reliance Standard meets the criteria of a "governmental plan." If the plan qualifies as a governmental plan under 29 U.S.C. § 1002(32), then Plaintiffs' ERISA claims must be dismissed pursuant to 29 U.S.C. § 1003(b)(1). See Williams v. New Castle County, 970 F.2d 1260, 1265 (3d Cir. 1992) ("It is clear, however, that under 29 U.S.C. § 1003(b)(1), none of the ERISA provisions applies to a government employee benefits plan.").

#### **A. Plaintiffs' ERISA Claims**

##### **1. The "Governmental Plan" Exemption**

"ERISA is designed to ensure the proper administration of pension and welfare plans, both during the years of the employee's active service and in his or her retirement years." Boggs v. Boggs, 520 U.S. 833, 839 (1997). As such, ERISA applies "to any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce . . ." 29 U.S.C. § 1003(a)(1). Despite its broad application, ERISA expressly exempts any

"governmental plan" from its employee benefit plan provisions. 29 U.S.C. § 1003(b)(1); see also Rose v. Long Island R.R. Pension Plan, 828 F.2d 910, 914 (2d Cir. 1987), cert. denied 485 U.S. 936, 99 L.Ed.2d 273, 108 S.Ct. 1112 (1988) ("Although Congress considered whether ERISA should apply to 'public' or 'governmental' benefit plans, it ultimately decided to exempt such plans from compliance with most of ERISA's requirements.").

"The governmental plan exception to ERISA was established, in part, to protect state authority over relations with state employees." Zarilla v. Reading Area Cmty. Coll., Civ. A. No. 99-1057, 1999 WL 554609, at \*1 (June 30, 1999) (citing Rose, 828 F.2d at 914). Section 1003(b) provides in relevant part that "[t]he provisions of [ERISA-Subchapter I, Protection of Employee Benefit Rights] shall not apply to any employee benefit plan if . . . such a plan is a governmental plan." 29 U.S.C. § 1003(b)(1). Section 1002(32), in turn, defines a "governmental plan" as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing . . . ." 29 U.S.C. § 1002(32). Accordingly, the issue before this Court is whether PPA, the plan's sponsor, is a political subdivision, agency or instrumentality of Pennsylvania or any of its political subdivisions. If it is, then PPA's long term disability insurance plan falls under the governmental plan

exception and is therefore not subject to ERISA.

Courts have construed the governmental exception to ERISA narrowly. See e.g., Poitier v. Sun Life of Canada, Civ. A. No. 98-3056, 1998 WL 754980, at \*1 (E.D. Pa. Oct. 28, 1998); Krupp v. Lincoln Univ., 663 F.Supp. 289, 292 (E.D. Pa. 1987). As such, the exception is deemed to include only those "organizations traditionally characterized as governmental organizations," but not those "organizations having some significant relationship with a government but not themselves viewed as governmental." Krupp, 663 F.Supp. at 292. ERISA itself neglects to define the terms "political subdivision," "agency" or "instrumentality." See Zarilla, 1999 WL 554609, at \*1. Because ERISA is a federal statute, its terms "must be interpreted by reference to federal law, in the absence of clear legislative intent to the contrary." Rose, 828 F.2d at 915 (citing NLRB v. Natural Gas Util. Dist., 402 U.S. 600, 29 L. Ed. 2d 206, 91 S. Ct. 1746 (1971)).

The Third Circuit has yet to apply the terms "political subdivision," "agency" and "instrumentality" to determine whether a particular plan falls under ERISA's governmental exemption. Courts in this District, however, have applied two different types of analysis when construing the terms of 29 U.S.C. § 1002(32). See Zarilla v. Reading Area Cmty. Coll., Civ. A. No. 99-1057, 1999 WL 554609 (E.D. Pa. June 30, 1999); Poitier v. Sun Life of Canada, Civ. A. No. 98-3056, 1998 WL 754980 (E.D. Pa. Oct. 28, 1998).



In Zarilla, the court adopted the "employer-relationship" methodology of the United States District Court for the District of Columbia in Alley v. Resolution Trust Corp., 984 F.2d 1201 (D.C. Cir. 1993). The court in Alley considered whether the Federal Asset Disposition Association ("FADA"), a federally chartered savings and loan association, qualified as an "agency" or "instrumentality" so that its employee benefit policy would be exempt from ERISA coverage. Id. at 1202. In an opinion by then Judge Ruth Bader Ginsburg, the court held that the inquiry "most relevant for ERISA purposes" was the nature of the FADA's relationship to its employees. Id. at 1206. According to the court, the FADA functioned "not like a government agency, but like a private enterprise," because FADA employees were not part of the civil service system, and that the voting members of FADA's board of directors were private individuals, not government officials. Id. at 1206-07. Accordingly, the court found that FADA employee benefits plan did not qualify for the governmental plan exemption in Title I of ERISA. Id. at 1207.

In Poitier, 1998 WL 754980, at \*2, however, the court adopted a two-part test promulgated by the United States Supreme Court in NLRB v. Natural Gas Utility District, 402 U.S. 600, 29 L.Ed.2d 206, 91 S.Ct. 1746 (1971). Under this test, an entity is deemed a political subdivision if it is "either (1) created directly by the state, so as to constitute departments or administrative arms of

the government, or (2) administered by individuals who are responsible to public officials or the general electorate." NLRB, 402 U.S. at 604-05. The Supreme Court applied this test in order to determine whether an entity is exempt from the substantive provisions of both the National Labor Relations Act ("NLRA") and the Labor Management Relations Act ("LMRA"). Despite its origins under the NLRA and LMRA, the NLRB test has been applied by federal courts interpreting the meaning of "political subdivision" under other acts, including ERISA.<sup>3</sup> See e.g., Shannon v. Shannon, 965 F.2d 542, 547 (7th Cir. 1992) ("We think the proper test is the one implicitly approved, with limitations, in [NLRB, 402 U.S. at 604-05]); Rose v. Long Island R.R. Pension Plan, 828 F.2d 910, 916 (2d Cir. 1987) ("The NLRB guidelines are a useful aid in interpreting ERISA's governmental exemption, because ERISA, like the [NLRA] 'represents an effort to strike an appropriate balance between the interests of employers and labor organizations.'") (citation omitted).

As the Seventh Circuit noted, the NLRB test "has been regularly applied by federal courts to determine if a particular

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<sup>3</sup> The language of the LMRA's "employer exception" mirrors that of ERISA's governmental plan exception. Section 152(2) of the LMRA defines an "employer" as including "any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, . . . or any State or political subdivision thereof, . . ." 29 U.S.C. § 152(2). Similarly, ERISA defines "governmental plan" as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." 29 U.S.C. § 1002(32).

entity is a governmental subdivision, agency or instrumentality under the NLRA and the LMRA," as well as "other labor-related cases . . . to determine if a particular entity is entitled to a statutory exemption because it is a governmental subdivision, agency or instrumentality." Shannon, 965 F.2d at 547-48 (citations omitted). Most importantly, federal courts have adopted the NLRB test within the ERISA context. Id. at 548. The applicability of the NLRB test to the case at bar is particularly relevant since the PPA is an agency of the Commonwealth of Pennsylvania. See 53 Pa. Cons. Stat. Ann. § 5505(a)(1). Conversely, "Alley is distinguishable from the case at bar in one important aspect recognized in Alley itself." Caranci v. Blue Cross & Blue Shield, 194 F.R.D. 27, 35 (D.R.I. 2000). As the court in Caranci explained:

In Alley, the Court was considering whether an entity was an agency or instrumentality of the federal, as opposed to a state, government. Judge Ginsberg noted that: "Concern about protecting state authority over relations with state employees was one reason for the governmental plan exemption; a Rose-style test focusing broadly on the extent of governmental contacts may be more appropriate where state-affiliated entities are concerned."

Id. (citation omitted). Accordingly, the Court will apply the NLRB test adopted by the Second and Seventh Circuits.



## 2. The NLRB Test

As noted above, the United States Supreme Court in NLRB v. Natural Gas Utility District applied a two-part test to determine whether an entity is considered a political subdivision of the government. See NLRB, 402 U.S. at 604-05. Under the first part, a court considers whether the entity was "created directly by the state, so as to constitute departments or administrative arms of the government." Id. The second inquiry considers whether the entity is "administered by individuals who are responsible to public officials or the general electorate." Id. Applying the NLRB test to the facts of the instant case, it is clear that PPA qualifies as a agency of the state.

PPA satisfies the first criterion of the NLRB test because the PPA is a public benefit corporation which was created under a Pennsylvania statute to perform the necessary governmental function of developing and improving parking for the benefit of people of the Commonwealth. See 53 Pa. Cons. Stat. Ann. § 5505(a)(1). The PPA is a "public corporate body created by the Philadelphia City Council" under the authority of the Parking Authority Law," 53 Pa. Cons. Stat. Ann. §§ 5501-17 (formerly 53 Pa. Cons. Stat. Ann. §§ 341-56). See Scott v. Phila. Parking Auth., 166 A.2d 278, 279 (Pa. 1960). The Parking Authority Act was created in "response to a statewide parking crisis" in order to "provide for the establishment of various parking authorities charges with

'administering and enforcing an efficient system'" of both on and off street parking. Auto Parks, Inc. v. City of Phila., Civ. A. Nos. 86-5895, 86-6657, 1987 WL 11500, at \*2 (E.D. Pa. May 22, 1987). The PPA's enabling legislation provides that a parking authority "shall constitute a public body corporate and politic, exercising public powers of the Commonwealth as an agency of the Commonwealth". 53 Pa. Cons. Stat. Ann. § 5505(a)(1) (emphasis added). Accordingly, PPA is a agency of the Commonwealth within the meaning of part one of the NLRB test.<sup>4</sup>

The second inquiry under the NLRB test is likewise met since state law provides that PPA be administered by board members appointed by the Governor, and that the Governor may remove a board member for cause before the expiration of the term.<sup>5</sup> The determination of whether an entity is a political subdivision can be further guided by examining whether the entity possesses other

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<sup>4</sup> Similarly, the Southeastern Pennsylvania Transportation Authority ("SEPTA") was deemed to be an agency of the Commonwealth based on the language of its enabling legislation. See Major v. Southeastern Pa. Transp. Auth., Civ. A. No. 92-3218, 1993 WL 21212, at \*1 (E.D. Pa. Jan. 22, 1993). SEPTA's enabling legislation, like that of the PPA, provides that it "shall exercise the public powers of the Commonwealth as an agency and instrumentality thereof . . ." 74 Pa. Cons. Stat. § 1701 (formerly 74 Pa. Cons. Stat. § 1502(a)). Therefore, the court concluded that SEPTA was an agency of the Commonwealth and was thus excluded from coverage under ERISA. See Major, 1993 WL 21212, at \*1.

<sup>5</sup> 53 Pa. Cons. Stat. Ann. § 5508.1(e) provides:  
(1) The Governor shall appoint six additional members of the board.  
(2) Gubernatorial appointments shall be made as follows: two upon the Governor's own discretion, two from a list of at least three nominees prepared and submitted to the Governor by the President pro tempore of the Senate and two from a list of at least three nominees prepared and submitted to the Governor by the Speaker of the House of Representatives.

indicia of sovereignty. See Rose, 828 F.2d at 917 (finding that, where a state statute created a transportation authority to perform governmental functions to be administered by board members that were appointed and removable by the governor, and to have certain sovereign powers, such a transportation authority was a political subdivision of the state under the definition of governmental plan ERISA). Here, PPA possess "other indicia of sovereignty" pursuant to its enabling legislation, including the power of eminent domain, and the exemption of its property and revenues from state and local taxes. See 53 Pa. Cons. Stat. Ann. § 5505(d)(15); id. at § 5515 ("Since authorities will be performing essential governmental functions effectuating these purposes, authorities shall not be required to pay taxes or assessments upon property acquired or used by them for such purposes.").

PPA correctly argues that the fact that its plan is offered and administered by a private insurance company, Reliance Standard, is not dispositive on the issue of whether the plan qualifies for the governmental exception. "The mere fact that plaintiff's plan may have been 'established through' a private company, rather than the public employee program, is not determinative. A plan is not deprived of its governmental plan status simply because it is privately administered." Zarilla, 1999 WL 554609, at \*3; see also Triplett v. United Behavioral Health Sys., Inc., 1999 WL 238944, at \*3 (E.D. Pa. March 29, 1999); Zeller v. Reading Sch. Dist., Civ. A.

No. 92-1943, 1992 WL 160466, at \*1 (E. D. Pa. June 25, 1992).

Both Reliance Standard and Plaintiffs attempt to discount PPA's argument that its plan qualifies for the governmental exception under ERISA on mere technicalities. See Pls.' Resp. to PPA's Mot. to Dismiss at 2-3 (arguing PPA failed to raise objection in a timely manner, or that PPA waived objections); Def. Reliance Standard's Resp. to PPA's Mot. at 4 (arguing PPA made a judicial admission that the disability plan at issue was an ERISA plan). However, this Court has an obligation to determine whether it has subject matter jurisdiction over Plaintiffs' ERISA claims. See Meritcare v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999) (holding that a district court may "address the question of jurisdiction, even if the parties do not raise the issue") (citation omitted). PPA is clearly an agency of the Commonwealth. Accordingly, PPA's long term disability plan at issue in the instant case qualifies as a "governmental plan" that was "established or maintained for its employees" by an agency of the Commonwealth of Pennsylvania under 29 U.S.C. § 1002(32). See Major v. Southeastern Pa. Transp. Auth., Civ. A. No. 92-3218, 1993 WL 21212, at \*1 (E.D. Pa. Jan. 22, 1993). Therefore, Plaintiffs' ERISA claims must be dismissed pursuant to 29 U.S.C. § 1003(b)(1).

**B. PPA's Immunity Under Pennsylvania's Political Subdivision Tort Claims Act**

PPA also argues that the Plaintiffs' state law claims are not

actionable under Pennsylvania's Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. § 8542 (the "Tort Claims Act"). With certain specified exceptions, the Tort Claims Act immunizes "local agencies" from liability for "any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa. Cons. Stat. Ann. § 8541. These categories are the operation of motor vehicles; the care, custody and control of real property, personal property, and animals; and the maintenance of utility service facilities, streets, trees, street lighting, traffic controls, and sidewalks. Id. § 8542(b). "Negligent acts" for which a local agency may be held responsible do not include acts by an employee that constitute a "crime, actual fraud, actual malice, or willful misconduct"; only the offending employees themselves may be held liable for such conduct. See id. § 8542(a)(2); § 8550.

It is well settled that PPA is a "local agency" within the meaning of the Tort Claims Act. See Five Star Parking v. Phila. Parking Auth., 662 F.Supp. 1053 (E.D. Pa. 1986); E.Z. Parks, Inc. v. Larson, 498 A.2d 1364 (Pa. Commw. Ct. 1985), affd. 503 A.2d 931 (Pa. 1986). PPA argues that the itemized list of acts for which Pennsylvania has provided a limited waiver of local agency immunity does not provide a waiver of immunity for the Plaintiffs' claims. See 42 Pa. Cons. Stat. Ann. § 8542(b). The Plaintiffs' claims of fraud and loss of consortium arise out of Plaintiff Jacquelyn

Perazzo's denial of long term disability benefits, which is not an act that appears on the list in section 8542(b). Therefore, the Parking Authority is immune from Plaintiffs' claims for fraud and loss of consortium.

**C. Plaintiffs' Remaining State Law Claims Against Reliance Standard**

In their Second Amended Complaint, Plaintiffs allege that this Court has subject matter jurisdiction over the instant action solely on the basis of federal question and supplemental jurisdiction. See Pls.' Second Am. Compl. at ¶ 7. The Court has found that Plaintiffs may not maintain an ERISA action because the plan at issue qualifies as a "governmental plan" under 29 U.S.C. § 1002(32), and therefore is exempt from ERISA under 29 U.S.C. § 1003(b)(1). Accordingly, Plaintiffs' ERISA claims against PPA and Reliance Standard are dismissed. Because Plaintiffs' federal claims have been dismissed, and because Plaintiffs provide no other basis for federal jurisdiction,<sup>6</sup> the Court no longer has supplemental jurisdiction over the remaining state law claims against Reliance Standard under 28 U.S.C. § 1367(a).<sup>7</sup> The district

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<sup>6</sup> It bears mentioning that Plaintiffs' repeated demand for judgment requests an amount in excess of \$50,000. See Pls.' Second Am. Compl. at ¶¶ 24, 29, 32, 38, 44, 49, 56, 65. Therefore, Plaintiffs' complaint is facially deficient and unable to sustain jurisdiction under 28 U.S.C. § 1332, Diversity of Citizenship.

<sup>7</sup> 28 U.S.C. § 1367(a) provides: "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Because the Court has concluded that the federal claim will be dismissed,

court must remand a case "if at any time before final judgment it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c). Therefore, Plaintiffs remaining state law claims against Reliance Standard will be dismissed for lack of subject matter jurisdiction. Accordingly, the remaining claims are remanded to the Court of Common Pleas of Philadelphia County.

An appropriate Order follows.

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supplemental jurisdiction will not be invoked in this action.

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

JACQUELYN PERAZZO and	:	CIVIL ACTION
ROBERT PERAZZO	:	
	:	
v.	:	
	:	
RELIANCE STANDARD LIFE INSURANCE	:	
COMPANY, and	:	
PHILADELPHIA PARKING AUTHORITY	:	No. 00-3342

**O R D E R**

AND NOW, this 15<sup>th</sup> day of November, 2001, upon consideration of Defendant Reliance Standard's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 14), Plaintiffs' Response to Defendant Reliance Standard's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 15), Reply Brief in Support of Defendant Reliance Standard's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 16), Defendant PP's Sur-Reply to Defendant Reliance Standard's Motion to Dismiss (Docket No. 20), Defendant PPA's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 17), Plaintiffs' Response to Defendant PPA's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 18), and Defendant Reliance Standard's Response to Defendant PPA's Motion to Dismiss Plaintiffs' Second Amended Complaint (Docket No. 19), IT IS HEREBY ORDERED that:

(1) Defendant Reliance Standard's motion is **DENIED**;

(2) Defendant PPA's motion is **GRANTED**, and Plaintiffs' ERISA claims and state law claims against PPA are **DISMISSED**; and

(3) IT IS FURTHER ORDERED that Plaintiffs' remaining state law claims against Reliance Standard are Ordered **REMANDED** to the Court of Common Pleas of Philadelphia County pursuant to 28 Title, United States Code § 1447(d).

BY THE COURT:

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HERBERT J. HUTTON, J.