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

HAROLD L. LEONARD and THE LEONARD CLINIC OF CHIROPRACTIC	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	NO. 04-5310
EDUCATORS MUTUAL LIFE INSURANCE COMPANY	:	
Defendant.	:	

MEMORANDUM AND ORDER

YOHN, J. May _____, 2005

This case arises out of an insurance dispute over unpaid medical benefits. Initially, the defendant in this case, Educators Mutual Life Insurance ("Educators"), brought suit in Pennsylvania state court seeking a declaratory judgment that its group insurance policy with plaintiffs Harold Leonard and The Leonard Clinic of Chiropractic ("the Clinic") was null and void.[1] Next, plaintiffs filed a counterclaim in state court under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq*. ("ERISA") to recover unpaid medical benefit owed under the policy.[2] While the suit in state court was pending, plaintiffs filed suit in this court seeking similar relief under ERISA. Presently before the court is Educators' motion to dismiss the federal complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). It requests that the court decline to exercise jurisdiction over the case, and instead defer to the parallel state court proceedings pursuant to the *Colorado River* abstention doctrine. *See Colo. River Water*

[1]Educators named Harold Leonard, his wife, Diane Leonard, and the Clinic in its original state court complaint. The complaint also alleged one count for common law fraud.

[2]The counterclaim also brought one count for breach of contract and one count under Pennsylvania's Unfair Insurance Practices Act, 40 Pa. Cons. Stat. § 1171.1 *et seq*.

Conservation Dist. v. United States, 424 U.S. 800 (1976). For the reasons set forth below, I will deny the motion.

I. BACKGROUND[3]

Plaintiff Harold Leonard operates the Clinic as a sole proprietor. In 1990, Leonard purchased group medical and life insurance coverage for the Clinic's employees from Educators. The policy covers active employees of the Clinic and their dependants. To remain eligible under the policy, the Clinic must remain "an active and ongoing business operation." Through 1998,[4] Leonard and his wife Diane both received coverage through the Clinic's policy with Educators. However, at some point after January 1, 1998, Educators began refusing to pay medical bills submitted by the Leonards.[5] Educators contends that its policy with the Clinic became null and void as of December 1, 1997 because the Clinic made misrepresentations in its October 30, 1997 application to renew coverage. Educators alleges that the Clinic ceased business operations prior to October 30, 1997, but in its subsequent renewal application, the Clinic represented that it was "an active and ongoing business operation."

On April 7, 2004, Educators filed suit in the Court of Common Pleas of Lancaster County, Pennsylvania against Harold Leonard, Diane Leonard, and the Clinic. The complaint

---

[3]I have assembled the following facts from the allegations in the state and federal court complaints and plaintiffs' state court counterclaim.

[4]Neither party indicates when the Leonards stopped paying for coverage with Educators.

[5]According to the state court complaint, since January 1, 1998, Educators has refused to pay $201,851.05 in medical bills that have been submitted by Harold Leonard and $23,543.00 in medical bills that have been submitted by Diane Leonard. Educators claims that it has paid $8,165.31 of Harold Leonard's medical bills and $135,573.88 of Diane Leonard's medical bills.

seeks a declaratory judgment that Educators' policy with the Clinic is null and void, and consequently, that it is not responsible for the Leonards' outstanding medical bills. On June 30, 2004, plaintiffs filed a counterclaim against Educators, alleging breach of contract and violations of ERISA and Pennsylvania's Unfair Insurance Practices Act, 40 Pa. Cons. Stat. § 1171.1 *et seq*. In their ERISA claim, plaintiffs sought to recover unpaid medical benefits and attorneys' fees pursuant to 29 U.S.C. § 1132(a)(1)(B)[6] and § 1132(g)(1).[7, 8] Six months later, on December 10, 2004, plaintiffs filed the instant suit in this court. The complaint brings two causes of action under ERISA. Plaintiffs first claim is identical to their ERISA claim in state court. Plaintiffs second claim alleges breach of fiduciary duty pursuant to 29 U.S.C. § 1109 and § 1132(a)(2).[9, 10]

On January 27, 2005, Educators filed the instant motion to dismiss. Five days later, in an effort to moot the motion, plaintiffs withdrew their ERISA claim in state court. Educators' preliminary objections to the remaining counts of plaintiffs' state court counterclaim are

---

[6]This section provides that "a participant or beneficiary" of a "employee benefit plan" may bring a civil action "to recover benefits due to him under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B).

[7]This provision states that in any action arising under ERISA, "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g)(1).

[8]ERISA provides that state courts have concurrent jurisdiction with United States district courts over actions arising under § 1132(a)(1)(B). 29 U.S.C. § 1132(e)(1).

[9]Section 1109 provides that "[a]ny person who is a fiduciary with respect to a plan who breaches any of the responsibilities . . . imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach . . . ." Section 1132(a)(2) authorizes "a participant or beneficiary or fiduciary" to sue for "appropriate relief under section 1109."

[10]Unlike plaintiffs' § 1132(a)(1)(B) claim, federal courts have exclusive jurisdiction over plaintiffs' breach of fiduciary duty claim. 28 U.S.C. § 1132(e)(1).

currently pending.

II. STANDARD OF REVIEW

In ruling on a motion to dismiss under Rule 12(b)(6), the court must accept as true all well-pled allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, to determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996); *Colburn v. Upper Darby Township*, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted). Although the court must construe the complaint in the light most favorable to the plaintiff, it need not accept as true legal conclusions or unwarranted factual inferences. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Courts will grant a 12(b)(6) motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

III. DISCUSSION

Federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colo. River*, 424 U.S. at 817 (citation omitted). Thus, generally, "'the pendency of an action in . . . state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction . . . .'" *Id*. (citation omitted). Nonetheless, in *Colorado River*, the Supreme Court held that when there are concurrent state proceedings, in "exceptional" circumstances, a district court may stay or dismiss a case for reasons of "wise judicial

administration." *Id*. at 817–18.[11]

A. Whether the state and a federal proceedings are parallel?

Before a district court may abstain on the basis of parallel state proceedings, the court must confirm that the proceedings are truly parallel. *See Trent v. Dial Med. of Fla., Inc*., 33 F.3d 217, 223 (3d Cir. 1994) ("Cases that are not truly duplicative do not invite *Colorado River* deference.") (overruled in part on other grounds in *Ryan v. Johnson*, 115 F.3d 193, 198–99 (3d Cir. 1997)). Generally, cases are considered parallel when "they involve the same parties and claims." *Id*. However, "[t]o be parallel, the cases need not be identical in every respect." *Benninghoff v. Tolson*, No. 94-2903, 1994 U.S. Dist. LEXIS 13428, at *5 (E.D. Pa. Sept. 22, 1994) (citation omitted). Rather, "there must be a substantial likelihood that the state litigation will dispose of all the claims presented in the federal case." *CFI of Wis., Inc. v. Wilfran Agric. Indus., Inc*., No. 99-1322, 1999 U.S. Dist. LEXIS 16896, at * 5 (E.D. Pa. Nov. 1, 1999) (citation omitted). Courts have found that if a state court defendant brings a claim in federal court that could have been brought as a counterclaim in state court, "the cases are . . . not meaningfully different." *Allied Nut and Bolt, Inc*. v. *NSS Indus.*, Inc., 920 F. Supp. 626, 630 (E.D. Pa. 1996); *see also CFI of Wis., Inc*. 1999 U.S. Dist. LEXIS 16896, at *5–*6 ("Courts have held that two actions are parallel even though a party must amend its pleadings in the state court to raise all claims.") (citations omitted).

[11]Unlike other so-called "abstention" doctrines, *Colorado River*abstention is "unrelated to considerations of proper constitutional adjudication and regard for federal-state relations." *Colo. River*, 424 U.S. at 817. For a review of the three constitutionally-based abstention doctrines *see id.* at 814–16. *See also Trent v. Dial Med. of Fla., Inc.*, 33 F.3d 217, 223 n.5 (3d Cir. 1994).

Plaintiffs contend that the two cases are no longer parallel because it withdrew its ERISA claim in state court. Plaintiffs in federal court may moot *Colorado River*issues by withdrawing a parallel state court action. *See Cohen v. Township. of Cheltenham*, 174 F. Supp. 2d 307, 319 (E.D. Pa. 2001). In *Cohen*, the court concluded that *Colorado River*abstention was inappropriate after the plaintiffs withdrew their entire state court action because "there simply [were] no concurrent parallel proceedings." *Id*. Here, plaintiffs did not withdraw their entire counterclaim. Instead, they merely withdrew the one count that was facially identical to the federal complaint. However, because cases need not be identical to be parallel, plaintiffs' cannot moot Educator's motion by withdrawing one claim if there remains "a substantial likelihood that the state litigation will dispose of all the claims presented in the federal case. " *CFI of Wis.*, 1999 U.S. Dist. LEXIS 16896, at * 5.

Here, even after plaintiffs' withdrew their ERISA counterclaim in state court, the two cases appear substantially similar. Both proceedings involve the same parties and arise out of the same insurance policy. Further, Educators' state declaratory judgment action, plaintiffs' state counterclaims, and plaintiffs' first ERISA claim will all turn on the validity of plaintiffs' insurance policy.

Nonetheless, despite the similarities between the two actions, the cases are not parallel because plaintiffs' federal suit includes a claim that falls within the exclusive jurisdiction of the federal courts. Plaintiffs second count alleges that Educators breached their fiduciary duties in violation of 29 U.S.C. § 1109 and § 1132(a)(2). Federal courts have exclusive jurisdiction over such claims. *See* 29 U.S.C. § 1132(e)(1) ("Except for actions under subsection (a)(1)(B) of this section the district courts of the United States shall have exclusive jurisdiction of civil actions

under this subchapter . . . ."). Three courts of appeals have concluded that courts may not abstain from exercising jurisdiction under *Colorado River* when one of the claims in the federal proceeding falls within exclusive federal jurisdiction.[12] *See Medema v. Medema Builders, Inc.*, 854 F.2d 210, 215 (7th Cir. 1988) ("In one class of cases, those where a plaintiff's nonfrivolous claim invokes the exclusive jurisdiction of federal courts, the *Colorado River*stay is not appropriate."); *Andrea Theatres, Inc. v. Theatre Confections, Inc.*, 787 F.2d 59, 62 (2d Cir. 1986) ("[A]bstention is clearly improper when a federal suit alleges claims within the exclusive jurisdiction of the federal courts."); *Silberkleit v. Kantrowitz*, 713 F.2d 433, 436 (9th Cir. 1983) ("The district court has no discretion to stay proceedings as to claims within exclusive federal jurisdiction under the wise judicial administration exception."). The Third Circuit has suggested, in dicta, that it would come to a similar conclusion. *See University of Md. v. Peat Marwick Main & Co.*, 923 F.2d 265, 276 n.16 (3d Cir. 1991) ("Although we have not resolved the question as to whether Commonwealth Court jurisdiction over the policyholders' claims exists, we observe that there can be no possible basis for abstaining if the state court to which the federal court defers lacks jurisdiction over the claim."); see *also Steiert v. Mata Servs.*, 111 F. Supp. 2d 521, 528 (D.N.J. 2000) ("[T]he exclusive federal nature of Plaintiffs' . . . claims lends strong force to the Court's conclusion that the proceedings are not truly parallel.") (citing *University of Md.*, 923 F.2d at 276 n.16).[13] The *University of Maryland* court reasoned that "[i]f the [plaintiffs'] claims

---

[12]The Supreme Court raised this issue but failed to resolve it in *Will v. Calvert Ins. Co.*, 437 U.S. 655 (1988). *See* Erwin Chemerinsky, Federal Jurisdiction, at 855 (4th ed. 2003).

[13]In cases applying other abstention doctrines, the Third Circuit has similarly concluded that "abstention is inappropriate in cases in which federal courts have exclusive jurisdiction over at least a portion of the claims presented." *Chiropractic Am. v. LaVecchia*, 180 F.3d 99, 108 (3d Cir. 1999) (considering whether to abstain on the basis of *Burford* abstention); *see also Riley v.*

are not subject to review in a state forum, there can be no 'parallel' state court litigation on the basis of which a federal court could exercise *Colorado River* abstention." *Id*.

Courts and commentators have advanced an additional reason why federal courts should not abstain on *Colorado River* grounds when a claim falls within their exclusive jurisdiction. If federal courts defer to state courts in cases involving exclusively federal claims, the federal courts may eventually have to decide the exclusively federal claims because the state courts have no jurisdiction to hear them. Such a result surely does not advance *Colorado River*'s goal of "wise judicial administration."[14] *See Andrea Theatres*, 787 F.2d at 62 ("Absent broad state court jurisdiction that would enable the state court to dispose of the entire matter, including the issues before the federal court, abstention could hardly be justified on grounds of 'wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'") (quoting *Co. River*, 424 U.S. at 817); *Medema*, 854 F.2d at 215 ("[I]f preclusive effect is not given to state law determinations of exclusively federal claims . . . a stay does not advance *Colorado River*'s purpose of avoiding piecemeal litigation.") *see also* Erwin Chemerinsky, Federal Jurisdiction, at 856 (4th ed. 2003).

Here, the state and federal proceedings are not truly parallel because the federal litigation may require the court to make determinations under exclusively federal law, which the state court may not decide. *See University of Md. v. Peat Marwick Main & Co.*, 923 F.2d at 276 n.16. Further, even if I abstained from considering plaintiffs' first count, which may be decided in state

---

Simmons, 45 F.3d 764, 773 (3d Cir. 1995).

[14]This rationale suggests that when a suit contains some exclusively federal claims, federal courts should not abstain from hearing any part of the suit even if state courts may adjudicate some of the claims.

court, ultimately, I may have to consider plaintiffs' breach of fiduciary duty claim because the state court may not. Under these circumstances, abstention would not further *Colorado River*'s goal of "wise judicial administration." Because the state and federal action are not truly parallel, the court may not abstain from considering plaintiffs' suit.

B. *Colorado River* factors

Even if the federal and state litigation were parallel, *Colorado River* abstention would be inappropriate. A federal court may only abstain under *Colorado River* in "exceptional" circumstances. *Colo. River*, 424 U.S. at 818. In *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983), the Supreme Court reexamined the *Colorado River* doctrine and articulated the following six factors to determine whether a district court should abstain for reasons of "wise judicial administration":

> (1) Which court first assumed jurisdiction over property involved, if any:
> (2) Whether the federal forum is inconvenient;
> (3) The desirability of avoiding piecemeal litigation;
> (4) The order in which the respective courts obtained jurisdiction;
> (5) Whether federal or state law applies; and
> (6) Whether the state court proceeding would adequately protect the federal plaintiff's rights.

Trent, at 33 F.3d at 2225 (citing *Moses H. Cone*, 460 U.S. at 15–16, 19–26). The *Moses H. Cone* Court further explained that "the decision whether to dismiss a federal action because of parallel state-court litigation does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction." 460 U.S. at 16.

Application of the factors suggests that abstention is inappropriate. The first factor is not relevant because there is no dispute over *in rem* jurisdiction or property rights. The second factor

also carries little weight because Educators concedes that the federal courthouse in Philadelphia and the state courthouse in Lancaster[15] are equally convenient forums for the adjudication of this matter.

Educators primarily relies on the third factor, which considers the "desirability of avoiding piecemeal litigation." "*Colorado River* abstention must be grounded on more than just the interest in avoiding duplicative litigation." *Spring City Corp. v Am. Bldgs Co.*, 193 F.3d 165, 172 (3d Cir. 1999). To justify abstention on the basis of concurrent litigation, there must be "a strongly articulated congressional policy against piecemeal litigation in the specific context of the case under review." *Ryan*, 115 F.3d at 198. Educators argues that ERISA reflects just such a policy because it provides state courts with concurrent jurisdiction over certain claims arising under the statute. *See* 29 U.S.C. § 1132(e)(1). In *Colorado River*, 424 U.S. at 819, the court found that the McCarran Amendment, 43 U.S.C. § 666, which provides that the United States may be joined as a party in water rights cases pending in state court, evidences a clear preference for state courts and a clear policy against piecemeal adjudication because it deprives the United States of its right to adjudication in a federal forum. *See also Moses H. Cone*, 460 U.S. at 16 (summarizing the reasoning in *Colorado River*). Here, ERISA certainly does not express a strong congressional policy against piecemeal adjudication. Congress must have contemplated the possibility of parallel ERISA litigation in state and federal court because while it gives state courts concurrent jurisdiction over some ERISA claims, it vests federal courts with exclusive jurisdiction over other claims arising under the statute. *See* 29 U.S.C. § 1132(e)(1). Further, unlike the McCarran Amendment, ERISA reflects a congressional preference for federal courts

[15]Lancaster County is located in this judicial district.

because it grants them exclusive jurisdiction over some claims and its legislative history contemplates the development of "a body of Federal substantive law." 120 Cong. Rec. 29,942 (1974) (remarks of Sen. Javits). Hence, the third *Colorado River*factor does not support abstention.

The fourth factor, which looks at "the order in which the respective courts obtained jurisdiction," arguably favors abstention. Under this factor, courts must consider "which complaint was filed first" and "how much progress has been made in the two actions." *Moses H. Cone*, 460 U.S. at 21. The state proceeding was filed eight months before the federal suit. Nonetheless, Educators has failed to come forward with any evidence about the progression of either case. As the moving party, Educators bears the burden of showing that abstention is warranted. *See Southeastern Pa. Transp. Auth. v. Am. Coastal Indus., Inc.*, 682 F. Supp. 285, 286 (E.D. Pa. 1988) ("[The moving party] bears the burden of showing that 'there exist "exceptional" circumstances, the "clearest of justifications," that can suffice . . . to justify the surrender of [federal] jurisdiction.'") (alteration in original) (quoting *Moses H. Cone*, 460 U.S. at 25–26). Hence, because Educators has failed to show that the state proceedings have progressed substantially further than the federal proceedings, the mere fact that the state case was filed first does not weigh heavily in favor of *Colorado River*abstention.

The final two factors weigh strongly against abstention. Although the presence of state-law issues may occasionally weigh in favor of abstention, the Supreme Court has emphasized that "the presence of federal-law issues must always be a major consideration weighing against [abstention]." *Moses H. Cone*, 460 U.S. at 26. Here, the federal suit arises solely under ERISA and thus raises exclusively federal issues. Further, because plaintiffs' federal complaint contains

a claim that falls within the exclusive jurisdiction of the federal courts, the state court proceedings could not adequately protect plaintiffs' rights since the court cannot even hear one of plaintiffs' claims.[16] *See McConnell v. Costigan*, No. 00-4598, 2000 U.S. Dist. LEXIS 16592, at *21 (S.D.N.Y. Nov. 14, 2000) ("The State Suit cannot adequately protect plaintiffs' rights because the federal courts have exclusive jurisdiction over plaintiffs' ERISA claim.); *see also Magna Group, Inc. v. Gordon Floor Covering, Inc.*, No. 3-99-1926, 2000 U.S. Dist. LEXIS 6067, at *11 (N.D. Tex. May 4, 2000) ("This factor has weighed against abstention in cases where the state court may not have had authority to exercise jurisdiction over the subject matter of a party's claims.") (citations omitted).

After weighing all of the *Colorado River* factors, I conclude that Educators has failed to overcome the strong presumption in favor of exercising federal jurisdiction, and thus, I will deny its motion to dismiss. *See Ryan*, 115 F.3d at 200.

IV. CONCLUSION

Because the state and federal proceedings are not parallel, and because Educators has failed to show the type of "exceptional" circumstances that warrants *Colorado River* abstention, I will not abstain from considering plaintiffs' suit and I will deny the present motion to dismiss. An appropriate order follows.

---

[16]Educators claims that the state proceedings can adequately protect plaintiffs' rights because plaintiffs voluntarily invoked the state court's concurrent jurisdiction by bringing an ERISA cause of action in their counterclaim. This argument wholly ignores the fact that plaintiffs' federal suit includes an exclusively federal claim that state courts may not adjudicate. Thus, regardless of the causes of action alleged in plaintiffs' state counterclaim, state courts cannot provide plaintiffs with the relief that is available in federal court.

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

HAROLD L. LEONARD and THE LEONARD CLINIC OF CHIROPRACTIC	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	NO. 04-5310
EDUCATORS MUTUAL LIFE INSURANCE COMPANY	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of May, 2005, upon consideration of defendant Educators Mutual Life Insurance's motion to dismiss (Doc. No. 3) and plaintiffs Harold L. Leonard and the Leonard Clinic of Chiropractic's opposition thereto (Doc. No. 5), it is hereby ORDERED that the motion is denied.

_____

William H. Yohn. Jr., J.