

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

ELIJAH KINEG, A MINOR BY	:	CIVIL ACTION
RAINE SPRINGER,	:	
Plaintiff	:	
	:	
v.	:	NO. 05-00359
	:	
HARTFORD LIFE & ACCIDENT	:	
INSURANCE COMPANY, :	:	
a/k/a and/or d/b/a HARTFORD LIFE,	:	
Defendant	:	

MEMORANDUM

STENGEL, J.

May 4, 2005

This is an action brought by the beneficiary of a life insurance policy against an insurance company for denial of coverage. The insurance company filed a motion to dismiss the claims as preempted by the Employee Retirement Income Security Act (“ERISA”). For the following reasons, I will dismiss the State law claims and order the Plaintiff to file an amended Complaint asserting a claim under ERISA.

BACKGROUND

The facts of this case are gleaned from the pleadings and are presented in the light most favorable to Plaintiff. Mark Kineg, an employee of the Pocono Medical Center and father of Elijah Kineg, was killed in an auto accident on February 26, 2002. Through his employment, Mark Kineg had been insured under a group life and accident insurance policy issued by Hartford Life & Accident Insurance Company (“Hartford”) of which Elijah was a beneficiary. Shortly after the accident, Raine Springer, Elijah’s mother, began to attempt to secure the proceeds of the policy on Elijah’s behalf. An examiner with Hartford’s Benefit Management Services informed Ms. Springer that the policy consisted of two separate death benefits, one for \$75,000 and the

other for \$38,000 with a double indemnity clause.

However, according to the Complaint, Hartford failed and refused to make any payment; it delayed the investigation; it delayed the payment of the undisputed amount; it denied coverage without conducting a reasonable and objective investigation; and it has unjustifiably relied on a vague exclusionary clause in order to avoid payment.

Ms. Springer brought this suit on Elijah's behalf in the Berks County Court of Common Pleas, and included nine claims under State law: Count I - Breach of Contract; Count II - Good Faith & Fair Dealing; Count III - Breach of Fiduciary Duty; Count IV - Bad Faith; Count V - Unfair Trade Practices & Consumer Protection Law; Count VI - Fraudulent Misrepresentation/Deceit; Count VII - Negligent Misrepresentation; Count VIII - Negligence; and Count IX - Vicarious Liability. Plaintiff seeks compensatory, consequential, and punitive damages plus interest, costs, and attorney's fees.

Hartford timely removed the case to federal court as a claim arising under the laws of the United States, i.e., ERISA. Shortly thereafter, Hartford filed a motion to dismiss all the claims arguing that they are all preempted by ERISA. In February 2005, Plaintiff filed a response in opposition to Hartford's motion to dismiss. In that response, Kineg contended: 1) that he is seeking benefits from an insurance policy, not an employee welfare plan; 2) that his request for benefits is not governed by ERISA; and 3) that even if the policy were governed by ERISA, his claims fall within ERISA's "saving clause."

A month later, the parties filed a stipulation that the plan at issue here, through which Kineg seeks life insurance benefits, is governed by ERISA. This stipulation disposed of Kineg's first two arguments against dismissal. The third argument, i.e., that if the policy were governed

by ERISA, Kineg's claims would fall within ERISA's savings clause, must also fail.

DISCUSSION

Title 29 of the United States Code Section 1132(e)(1) provides U.S. District Courts with exclusive jurisdiction over ERISA actions. The standard for deciding a Rule 12(b)(6) motion is whether, under any reasonable reading of the pleadings, the Plaintiff is entitled to relief. Simon v. Cebrick, 53 F.3d 17, 19 (3d Cir. 1995). A court ruling on a Rule 12(b)(6) motion must accept as true the well-pleaded facts as alleged in the Plaintiff's Complaint, and draw all reasonable inferences therefrom in the light most favorable to the Plaintiff. D.R. v. Middle Bucks Area Vocational Tech. Sch., 972 F.2d 1364, 1367 (3d Cir. 1992). The court may consider only the Complaint, matters of public record, orders, exhibits attached to the Complaint, and items appearing in the record of the case. Oshiver v. Levin, Fishbein, Sedran, & Berman 38 F.3d 1380, 1384 (3d Cir. 1994). An item appearing in the public record of the case is defined as an undisputedly authentic document which a Plaintiff may have referenced or relied upon in his Complaint. Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196-1197 (3d Cir. 1993).

Congress enacted ERISA to protect participants in employee benefit plans and their beneficiaries. 29 U.S.C. § 1001(b). The statute comprehensively regulates, among other things, employee welfare benefit plans that, through the purchase of insurance or otherwise, provide medical, surgical, or hospital care, or benefits in the event of sickness, accident, disability, or death. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 44 (1987). Because of this comprehensive regulation, ERISA broadly preempts all State laws that "relate to any employee benefit plan." 29 U.S.C. § 1144(a). This provision preempts both State common law and statutory causes of

action. *See* Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. at 47-48. 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. *See* Ingersoll-Rand Co. v. McClendon, 498 U.S. at 138; Shaw v. Delta Airlines, Inc., 463 U.S. 85, 97 (1983). The Supreme Court noted that “policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under State law that Congress rejected in ERISA.” Pilot Life Ins. Co. v. Dedeaux, 481 U.S. at 54. Thus, any State law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear Congressional intent to make the ERISA remedy exclusive and is preempted. Aetna Health, Inc. v Davila, 542 U.S. 200 (2004).

Although he now concedes that this employee welfare plan is governed by ERISA, Kineg argues that nevertheless his claims are not preempted because they fall within ERISA’s “saving clause.” That clause provides in part that “nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.” 29 U.S.C. § 1144(b)(2)(A).

For a State law to be deemed a law which regulates insurance under § 1144(b)(2)(A), it must satisfy two requirements: (1) the State law must be specifically directed toward entities engaged in insurance; and (2) the State law must substantially affect the risk pooling arrangement between the insurer and the insured. Kentucky Association of Health Plans, Inc. v. Miller, 538 U.S. 329, 341-342 (2003). ERISA’s savings clause does not require that a State law regulate “insurance companies” or even “the business of insurance” to be saved from preemption; it need

only be a “law of any State which regulates insurance.” Id. at 336.

Here, eight of the nine State law claims in the Complaint fail the first prong of the Miller test. The common law claims of breach of contract, violation of the duty of good faith and fair dealing, breach of fiduciary duty, fraudulent misrepresentation and deceit, negligent misrepresentation, negligence, and vicarious liability are not *specifically* directed toward entities engaged in insurance, as required to satisfy the first prong. These causes of action cover most, if not all, business relationships. Moreover, other courts have held that these State law causes of action are preempted by ERISA. *See* Pilot Life Ins. Co. v. Dedeaux, 481 U.S. at 48, 52 (ERISA preempts State law actions for breach of contract); Pane v. RCA Corporation, 868 F.2d 631, 635 (3d Cir. 1989) (ERISA preempts State law actions for breach of good faith and fair dealing); Garner v. Capital Blue Cross, 859 F. Supp. 145, 148-149 (M.D. Pa. 1994), *aff’d* 52 F.3d 314 (3d Cir. 1995) (ERISA preempts State law actions for negligence); Mitnik v. Cannon, 784 F. Supp. 1190, 1194-1195 (E.D. Pa. 1992), *aff’d* 989 F.2d 488 (3d Cir. 1993) (ERISA preempts State law actions for breach of fiduciary duty as it relates to an employee welfare benefit plan).

Further, the claim brought under Pennsylvania’s Unfair Trade Practices and Consumer Protection Law is also not specifically directed toward entities engaged in insurance. *See* 73 Pa.C.S.A. § 201-1, *et seq.* Rather, this statute prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of “any trade or commerce” and also contains specific media liability provisions. *See* 73 Pa.C.S.A. § 201-3. Therefore, because these eight counts in Kineg’s Complaint do not involve State laws which regulate insurance under § 1144 (b)(2)(A), they are preempted by ERISA, and will be dismissed.

Only one Count in the Complaint, i.e., the bad faith claim, arises under a statute which is

specifically directed at entities engaged in insurance. *See* Pennsylvania's Bad Faith Statute, 42 Pa.C.S. § 8371. Nevertheless, the Third Circuit Court of Appeals has recently held that ERISA preempts the bad faith statute. Barber v. UNUM Life Insurance Co. of America, 383 F.3d 134 (3d Cir. 2004). Thus, Count IV for Bad Faith, will also be dismissed.

If the entire Complaint were dismissed, Kineg may be foreclosed from properly filing an ERISA claim due to a potential expiration of the statute of limitations. ERISA itself does not provide a statute of limitations. Courts thus apply the most analogous State statute. *See* Henglein v. Colt Indus., 260 F.3d 201, 208 (3d Cir. 2001); Gluck v. Unisys Corp., 960 F.2d 1168, 1179 (3d Cir. 1992). Many courts which have addressed this issue have applied the statute of limitations for a State breach of contract action to a claim for benefits under ERISA. *See* Syed v. Hercules, Inc., 214 F.3d 155, 159 (3d Cir. 2000); Harrison v. Digital Health Plan, 183 F.3d 1235, 1239-1240 (11th Cir. 1999); Daill v. Sheet Metal Workers' Local 73 Pension Fund, 100 F.3d 62, 65 (7th Cir. 1996); Adamson v. Armco, 44 F.3d 650, 652 (8th Cir. 1995); Hogan v. Kraft Foods, 969 F.2d 142, 145 (5th Cir. 1992); Meade v. Pension Appeals & Review Comm., 966 F.2d 190, 195 (6th Cir. 1992) (courts have uniformly characterized § 1132(a)(1)(B) claims as breach of contract claims for purposes of determining the most analogous statute of limitations under State law); Held v. Manufacturers Hanover Leasing Corp., 912 F.2d 1197, 1207 (10th Cir. 1990); Pierce County Hotel Employees & Restaurant Employees Health Trust v. Elks Lodge, 827 F.2d 1324, 1328 (9th Cir. 1987); Dameron v. Sinai Hosp., 815 F.2d 975, 981 (4th Cir. 1987).

Although the Third Circuit Court of Appeals has not decided which State statute of limitations is applicable to ERISA, it has suggested that the State statute of limitations for a breach of contract action would apply to claims for benefits under 29 U.S.C. § 1132(a)(1)(B).

See Connell v. Trustees of the Pension Fund of the Ironworkers Dist. Council of N. New Jersey, 118 F.3d 154, 156 (3d Cir. 1997). Moreover, courts in our district have held that the State claim most analogous to a claim for denial of benefits due under the terms of an ERISA plan is a breach of contract claim. *See* Caruso v. Life Ins. Co. of N. Am., 2000 U.S. Dist. LEXIS 9164 (E.D. Pa. 2000); Crane v. Asbestos Workers Philadelphia Pension Plan, 1998 U.S. Dist. LEXIS 4293 (E.D. Pa. 1998); Cohen v. Zarwin & Baum, P.C., 1993 U.S. Dist. LEXIS 15775 (E.D. Pa. 1993).

Pennsylvania has a four-year statute of limitation for breach of contract claims. *See* 42 Pa. C.S.A. § 5525(8). Accordingly, Kineg would have four years to file an ERISA claim from the time he first learned that the benefit of his father's life insurance policy had been infringed or removed. Kineg's father was killed on February 26, 2002. Thus, using the statute of limitation for a breach of contract action, the earliest possible date for the expiration of the four-year limitations period would be February 26, 2006. This would provide Kineg ample time within which to re-file his claim under ERISA.

However, the Third Circuit has suggested that some ERISA claims could be governed by the three-year statute of limitations of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, *et seq.* *See* 43 Pa. Cons. Stat. Ann. § 260.9a(g); *see also* Gluck v. Unisys Corp., 960 F.2d 1168, 1180-1181 (3d Cir. 1992). Applying this statute of limitations could preclude Kineg from re-filing an ERISA claim.

Nevertheless, courts have held that when a Plaintiff's claims are completely preempted by ERISA as here, dismissal without prejudice to assert an ERISA claim is an appropriate course. *See* Cecchanecchio v. Continental Casualty Co., 2001 U.S. Dist. LEXIS 356 (E.D. Pa. 2001)

(dismissal with leave to file amended complaint with proper ERISA claim); Delong v. Teacher's Ins. and Annuity Ass'n, 2000 U.S. Dist. LEXIS 4759 (E.D. Pa. 2000) (dismissal without prejudice to file an amended complaint with ERISA claim after exhaustion of administrative remedies). Such a claim would ordinarily relate back to the initial filing date for limitations purposes pursuant to Fed. R. Civ. P. 15(c)(2).

In conclusion, the nine State law claims in King's Complaint are preempted by ERISA, and are therefore dismissed. I will grant Plaintiff leave to file an amended Complaint asserting an ERISA claim.

An appropriate Order follows.

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ELIJAH KINEG, A MINOR BY	:	CIVIL ACTION
RAINE SPRINGER,	:	
Plaintiff	:	
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v.	:	NO. 05-00359
	:	
HARTFORD LIFE & ACCIDENT	:	
INSURANCE COMPANY,	:	
a/k/a and/or d/b/a HARTFORD LIFE,	:	
Defendant	:	

ORDER

STENGEL, J.

AND NOW, this 4th day of May, 2005, upon consideration of Defendant's motion to dismiss (Document #3), Plaintiff's response thereto (Document #6), and Defendant's sur-reply (Document #10),

IT IS HEREBY ORDERED that Defendant's motion is GRANTED in part and DENIED

in part. Counts I through IX of Plaintiff's Complaint are dismissed with leave to amend the Complaint.

IT IS FURTHER ORDERED that Plaintiff shall have fifteen (15) days within which to file an amended Complaint asserting an ERISA claim; Defendant shall file a response within fifteen (15) days thereafter.

BY THE COURT:

/s/ Lawrence F. Stengel

LAWRENCE F. STENGEL, J.