

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

LAUREEN PENDLETON	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 97-4327
v.	:	
	:	
REGENT NATIONAL BANK,	:	
Individually and Trading as	:	
REGENT PREMIUM FINANCE	:	
Defendant	:	

MEMORANDUM-ORDER

GREEN, S.J.

June , 1998

Presently before the court is Defendant's unopposed Partial Motion to Dismiss Plaintiff's Amended Complaint. For the reasons set forth below, Defendant's Motion is granted.

FACTUAL AND PROCEDURAL BACKGROUND

The present action arises from an alleged denial of various employment related benefits including medical coverage and life and disability insurance under an employee benefit plan provided by Defendant. Plaintiff filed a Complaint against Defendant in the Court of Common Pleas of Philadelphia on May 8, 1997. Defendant filed a Notice of Removal pursuant to 28 U.S.C. § 1441 (b, c) on the basis that this court has original jurisdiction over the action under 28 U.S.C. § 1331. Thereafter, Defendant moved to dismiss the Complaint on the basis of ERISA preemption under 29 U.S.C. § 1001, et seq. On January 22, 1998 this court granted Defendant's Motion to Dismiss Plaintiff's Complaint based upon the finding that Plaintiff's initial complaint pled state law causes of action which are preempted by ERISA. In that same order, this court authorized Plaintiff to set forth her claims

pursuant to ERISA.

On February 20, 1998 Plaintiff filed an Amended Complaint which incorporated the original Complaint in its entirety and added a fourth count that alleges violations of ERISA. Defendant presently moves to dismiss Counts I, II and III of the Amended Complaint asserting that this court previously held Plaintiff's state law causes of action are preempted by ERISA.

DISCUSSION

A motion to dismiss a complaint for failure to state a claim may not be granted unless it appears from the face of the complaint that the plaintiff can establish no set of facts which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The facts must be taken as true and reviewed in the light most favorable to the plaintiff. Id.

Section 502(a)(1)(B) of ERISA provides the exclusive civil enforcement mechanism for beneficiaries to recover benefits from a covered employee benefit plan. 29 U.S.C. § 1132(a)(1)(B); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 62-63 (1987). ERISA preempts all state laws insofar as they "relate to" an employee benefit plan under ERISA. 29 U.S.C. § 1144(a). A state law or common law cause of action relates to a benefit plan if it has a connection with or reference to such a plan. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48 (1987)(citation omitted). Where the existence of an ERISA plan is a critical factor in establishing liability and the court's inquiry must be directed to the plan, the action "relates to" an ERISA plan and is

preempted. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139-140 (1990). Even if a plan agreement purports to be governed exclusively by state law, this type of agreement could not override the preemptive effect of ERISA. Howard v. Parisian, Inc., 807 F.2d 1560, 1565 (11th Cir. 1987)(citing Light v. Blue Cross and Blue Shield of Alabama, Inc., 790 F.2d 1247, 1248 (5th Cir. 1986)).

Section 502(a)(1)(B) of ERISA provides that a participant or beneficiary of an ERISA plan may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Thus, the Supreme Court has found that a claim for a denial of benefits asserted under common law breach of contract or tort principles is preempted by ERISA. See Metropolitan Life Ins. Co., 481 U.S. at 62-63. Furthermore, even where a plaintiff claims that the manner of the denial of benefits was malicious or negligent, such claims are still preempted by ERISA. See Clorox Co. v. U.S. Dist. Court for the Northern Dist. of California, 779 F.2d 517, 521 (9th Cir. 1985)(holding that plaintiff's claim that the defendant wrongfully and maliciously denied her employment benefits is preempted by ERISA); Garner v. Capital Blue Cross, 859 F. Supp. 145, 148 (M.D. Pa. 1994)(holding claims for negligent denial of benefits, negligent or intentional infliction of emotional distress, bad faith denial of a claim, fraud and breach of

contract all preempted by ERISA), aff'd, 52 F.3d 314 (3d Cir. 1995).

In the present case, the plan of health and welfare benefits provided by Plaintiff's employer to its employees constitutes an employee welfare benefit plan within the meaning of ERISA, 29 U.S.C. § 1001 et seq., and Plaintiff was a participant and/or beneficiary under such employee welfare benefit plan. See 29 U.S.C. § 1002. Plaintiff's claims that Defendant fraudulently and/or unjustly failed to provide the health and welfare benefits to Plaintiff amount to a claim for a denial of benefits due under Plaintiff's employee benefit plan. The law is clear that claims for a denial of benefits from an employee welfare benefit plan fall under the exclusive enforcement mechanism provided by ERISA. Metropolitan Life, supra. Plaintiff has not presented arguments to the contrary. Furthermore, Plaintiff's claims brought under the Pennsylvania Wage Payment and Collection Law ("WPCL") are similarly preempted by ERISA. McMahon v. McDowell, 794 F.2d 100, 105 (3d Cir. 1986). In McMahon, the court found that ERISA preempts because the claimed benefits related to an employee benefit plan. Id. at 105,106. Plaintiff's Complaint specifically alleges that "...defendant engaged in a scheme to defraud plaintiff of employment benefits, which it was obligated to offer all of its employees pursuant to ERISA..." (Compl., § 5). Therefore, as all of Plaintiff's state law causes of action are preempted by ERISA, Defendant's Partial Motion to Dismiss Plaintiff's Amended Complaint will be granted with prejudice as

to the claims brought pursuant to Pennsylvania law.

An appropriate Order follows.

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REGENT NATIONAL BANK,	:	
Individually as Trading as	:	
REGENT PREMIUM FINANCE	:	
Defendant	:	

ORDER

AND NOW, this day of June, 1998 upon consideration of Defendant's Partial Motion to Dismiss Plaintiff's Amended Complaint. IT IS HEREBY ORDERED that Defendant's Partial Motion is GRANTED and that Counts I, II and III of Plaintiff's Amended Complaint are DISMISSED WITH PREJUDICE.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.