

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

DR. DENNIS ZASLOW

v.

LAWRENCE MILES, MARY MILES,  
TEAMSTERS HEALTH & WELFARE  
FUND OF PHILADELPHIA & VICINITY

CIVIL ACTION

NO. 98-2540

M E M O R A N D U M

Broderick, J.

December 9, 1998

On April 16, 1998, Plaintiff Dennis Zaslow filed this action in the Philadelphia Municipal Court, seeking to recover medical benefits allegedly due him after he treated Defendant Lawrence Miles, a participant of the Defendant Teamsters Health & Welfare Fund of Philadelphia & Vicinity (the "Fund"). On May 15, 1998, the Fund removed the case to this Court on the ground that Plaintiff's claim against the Fund is preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1132 ("ERISA"). Presently before the Court is the Fund's motion to dismiss, brought pursuant to Fed.R.Civ.P. 12(b)(6), or in the alternative, for summary judgment, brought pursuant to Fed.R.Civ.P. 56. The Fund further moves the Court to remand the remainder of this action to State Court. Neither Plaintiff nor Defendant Miles has responded to the Fund's motion.

Because the Court will consider matters outside the pleadings, Defendant's motion will be treated as one for summary

judgment. See Fed.R.Civ.P. 12(b). For the reasons which follow, the Court will grant the Fund's motion for summary judgment and will remand the remaining claims to State Court.

The record before the Court reveals the following facts concerningt which there are no genuine issues:

In his Complaint, Plaintiff Dr. Zaslow alleges that he treated Defendant Lawrence Miles between August 2, 1993 and January 11, 1995, and that a balance for these services in the amount of \$1,425.00 is outstanding. According to the affidavit of the Fund's Administrator, William J. Einhorn, Defendant Lawrence Miles is a participant of the Teamsters Health & Welfare Fund, a multiemployer employee benefit plan established pursuant to § 302(c)(5) of the Labor Management Relations Act and §§ 3(1) and (37) of the Employee Retirement Income Security Act, 29 U.S.C. § 1002(1) and (37). Plaintiff alleges that bills for Dr. Zaslow's services to Mr. Miles were submitted to the Teamsters Health & Welfare Fund, but payment was denied. The Fund has a procedure for appealing the denial of a claim for benefits, which Mr. Einhorn attaches to his affidavit, and this procedure has been adopted by the Trustees as part of the Fund's basic document pursuant to ERISA § 503. However, according to Mr. Einhorn, neither Mr. Miles nor his assignee, Dr. Zaslow, has initiated or exhausted any of the administrative appeal procedures set forth in the Fund's plan.

### Legal Standard

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

The law is clear that when a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure is properly made, the non-moving party cannot rest on the mere allegations of the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Rather, in order to defeat the motion for summary judgment, the non-moving party, by its own affidavits, or by depositions, answers to interrogatories or admissions on file, as stated in Fed.R.Civ.P. 56(e), "must set forth specific facts showing that there is a genuine issue for trial." The Court, in determining whether there is a genuine issue of material fact, draws all inferences in favor of the non-moving party. Country Floors v. Partnership of Gepner and Ford, 930 F.2d 1056, 1061 (3rd Cir. 1991). However, "[t]he mere existence of a scintilla of evidence" in support of the non-movant's position will not be

sufficient to defeat a motion for summary judgment. Anderson, 477 U.S. at 252.

Under § 1123(a)(1)(B) of ERISA, the enforcement provision which creates a private cause of action, only "participants" and "beneficiaries" have standing to bring a lawsuit. 29 U.S.C. § 1123(a)(1). Numerous Circuits have held that a health care provider, as an assignee of an insured's claim, has standing to sue under ERISA. Cagle v. Bruner, 112 F.3d 1510, 1515 (11th Cir. 1997)(holding that ERISA does not prevent derivative standing based upon assignment); Lutheran Med. v. Contractors Health Plan, 25 F.3d 616, 619 (8th Cir. 1994)(ruling that assignment of ERISA rights permissible because "denying standing to health care providers as assignees of beneficiaries may undermine the goal of ERISA"); Kennedy v. Connecticut Gen. Life Insur., 924 F.2d 698, 700-01 (7th Cir. 1991)(same); Hermann Hosp. v. MEBA Medical and Benefits Plan, 845 F.2d 1286, 1289 (5th Cir. 1988)("Herman I")(same); Hermann Hosp. v. MEBA Medical and Benefits Plan, 959 F.2d 569 (5th Cir. 1992)("Herman II"); Misic v. Building Service Employees Health & Welfare Trust, 789 F.2d 1374, 1377-79 (9th Cir. 1986)(same).

The Third Circuit has held that a nonenumerated party is not in its own right a beneficiary with standing to sue. Northeast Dep't ILGWU v. Teamsters Local Union No. 229, 746 F.2d 147 (3rd Cir. 1985). However, the Third Circuit has not directly addressed the issue of whether a health care provider has

derivative standing to sue under § 1132(a)(1)(B) where the health care provider is an assignee of an insured's claim under an ERISA employee welfare benefit plan. Numerous district courts in this circuit, which have expressly considered the applicability of the Third Circuit's ILGWU decision, have held that health care providers have standing to sue under § 1132(a)(1)(B) where there has been an assignment of rights under the plan. Charter Fairmount Institute, Inc. v. Alta Health Strategies, 835 F.Supp. 233, 239 (E.D.Pa. 1993); Northwest Inst. of Psychiatry, Inc. v. Travelers Ins. Co., 1992 WL 236257 (E.D.Pa. 1992); Winter Garden Med. Ctr. v. Montrose Food Prods., 1991 WL 124577 (E.D.Pa. 1991); Bryn Mawr Hosp. v. Coatesville Elec. Supply Co., 776 F.Supp. 181, 184 (E.D.Pa. 1991). This Court likewise holds that Dr. Zaslow, as an assignee of Mr. Miles' claims under the Teamsters Health & Welfare Fund, has standing to sue under ERISA, and that therefore his state law claims are preempted by ERISA. E.g., Charter Fairmount Institute, Inc., 835 F.Supp. at 239.

Courts have consistently held in ERISA cases that a Plan participant must exhaust internal Plan procedures before seeking relief in court. "[A] federal court will not entertain an ERISA [§ 1132(a)(1)(B)] claim unless the plaintiff has exhausted the remedies available under the plan." Weldon v. Kraft, 896 F.2d 793, 800 (3d Cir.1990). Wolf v. National Shopman Pension Fund, 728 F.2d 182, 185 (3d Cir.1984). Likewise, the assignee of a Plan participant must exhaust available remedies under the Plan before seeking relief in court.

In the instant action, the Defendant Fund has submitted an affidavit from Mr. Einhorn, the Fund Administrator, which establishes that Dr. Zaslow is the assignee of Mr. Miles, who is a Fund participant, and that neither Mr. Miles nor Dr. Zaslow has initiated or exhausted the remedies available under the Plan. Plaintiff has failed to come forward with any evidence whatsoever that contradicts these facts. Therefore, the Court will grant Defendant Teamsters Health and Welfare Fund's motion for summary judgment and will enter judgment in favor of the Fund and against Plaintiff Dr. Zaslow.

Because no federal issues remain, Defendant's motion to remand Dr. Zaslow's remaining claims against Defendants Lawrence Miles and Mary Miles will be granted.

An appropriate Order follows.

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

DR. DENNIS ZASLOW

v.

LAWRENCE MILES, MARY MILES,  
TEAMSTERS HEALTH & WELFARE  
FUND OF PHILADELPHIA & VICINITY

CIVIL ACTION

NO. 98-2540

O R D E R

AND NOW, this 9th day of December, 1998; Defendant Teamsters Health & Welfare Fund of Philadelphia & Vicinity having filed a motion to dismiss, or in the alternative motion for summary judgment; Defendants having also filed a motion to remand the remaining claims to state court; Plaintiff having failed to respond to Defendant's motions; for the reasons stated in the Court's accompanying Memorandum of this date;

**IT IS ORDERED:** Defendant Teamsters Health & Welfare Fund of Philadelphia & Vicinity's motion for summary judgment is **GRANTED**;

**IT IS FURTHER ORDERED:** Defendant's motion to remand Dr. Zaslow's remaining claims against Defendants Lawrence Miles and Mary Miles is **GRANTED**.

---

RAYMOND J. BRODERICK, J.