IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ASBESTOS WORKERS LOCAL UNION NO. 42 WELFARE FUND,	)	
Plaintiff,	)	
v.	)	C.A. No. 04C-08-210 CHT
THOMAS L. BREWSTER, SR., CANDACE L. BREWSTER, and CHARLES SNYDERMAN, ESQUIRE,	)	
Defendants.	)	

OPINION AND ORDER

ON CROSS MOTIONS FOR SUMMARY JUDGMENT
BY PLAINTIFF AND DEFENDANTS

Submitted: January 12, 2006
Decided: September 25, 2006

Christopher D. Loizides, Esquire, LOIZIDES & ASSOCIATES,1225 King Street, Suite 800, Wilmington, DE 19801

David A. Gaudioso, Esquire, MERANZE & KATZ, P.C., 121 South Broad Street, 13th Floor, Philadelphia, PA 19102, Attorneys for Plaintiff

Charles Snyderman, Esquire, CHARLES SNYDERMAN, P.A., Stoney Batter Office Building, 5301 Limestone Road, Suite 214, Wilmington, DE 19808, Attorney for Defendants

TOLIVER, JUDGE

Before the Court is the Motion for Summary Judgment filed by the Defendants, Thomas L. Brewster, Sr., Candace L. Brewster and Charles Snyderman, Esquire. The Asbestos Workers Local Union No. 42 Welfare Fund has filed a similar motion. Given the fact that the motions address the same issues and portions of the record, they have been consolidated for purposes of disposition. That which follows is the Court's resolution of the controversy so presented.

NATURE OF THE PROCEEDINGS

Statement of Facts

The relevant facts upon which this controversy is premised are undisputed. Mr. Brewster was, at all times relevant to this litigation, a member of the Asbestos Workers Local Union No. 42. Among the benefits provided by Local 42 was a medical insurance or healthcare plan ("Plan") administered by Local 42's Welfare Fund. The Plan operates pursuant to and is governed by the provisions of the Employment Retirement Income Security Act ("ERISA").[1] As a member of Local 42, Mr. Brewster was covered by and is a participant in the Plan. Mrs. Brewster, defined as a

[1] 29 U.S.C. § 1001.

dependant of Mr. Brewster, was similarly entitled to health care and/or medical insurance. Eligibility for benefits available thru the Fund as well as the extent of the obligations of the Fund were defined in several Plan related documents. It is in this context that the instant saga began.

More specifically, on September 27, 1996, Mrs. Brewster sustained extensive injuries in a motor vehicle accident. Mr. Brewster applied to the Fund for payment of the related medical expenses. As a precondition to the payment of benefits, the Fund forwarded a document entitled "Asbestos Workers Local 42 Welfare Fund Subrogation Agreement" to Mr. Brewster for his review and endorsement. The pertinent portion of that document reads:

> In consideration of the payment to me at this time for medical expenses incurred or weekly accident and sickness benefits paid following the injuries above noted, should any benefits be paid or payable to me under any workman's award, settlement, compromise or judgment with respect to the same injury, then I do hereby assign to Local Union No. 42 Welfare Fund an amount equal to those benefits received by me from the Fund.[2]

---

[2] Pl. Mot. Summ. J., D.I. 11, Ex. C. The Plaintiff also highlights that there was a similar subrogation clause in the Plan Document. That clause reads in pertinent part:

> When injury or injuries and/or death (for which any benefits would otherwise be payable under this) are caused under circumstances which create a legal liability with some other person or party, any payment

The agreement was completed and executed by Mrs. Brewster with Mr. Brewster's consent and returned to the Fund. The Fund ultimately paid $42,852.44 in medical benefits to Mrs. Brewster upon receipt of the agreement.

At some unknown point following the accident referenced above, Mr. Snynderman initiated a claim on behalf of Mrs. Brewster seeking compensation for the injuries suffered as a result of that event. That claim was settled by Mr. Snynderman for $15,000, the limits of the liability policy covering the driver of the other vehicle involved in the accident. Mr. Snynderman then made a similar claim for underinsurance benefits against the company insuring the Brewsters, which was resolved by Mr. Snynderman for the sum of $100,000.

The Fund became aware that Mrs. Brewster had received compensation for her accident related injuries shortly after the settlements were consummated. It then requested that the Brewsters reimburse the Fund, based upon the Subrogation

---

> made by the Plan to or on behalf of the participant shall be considered an advance only, and acceptance by the participant, dependent or provider shall constitute their agreement to repay the payments to the plan in the event a recovery is made from the other person or party. In addition, the Fund shall be entitled to recover its lien directly from the third party.

Pl. Mot. Summ. J., D.I. 11, Ex. A.

Agreement, for the monies that the Fund paid to or on behalf of Mrs. Brewster. Mr. Snyderman questioned the Fund's entitlement to reimbursement on that basis and declined to do so on behalf of the Brewsters. Instead, the record reveals that Mr. Snyderman disbursed $30,000 to the Brewsters and deducted a sum as a fee for the legal services rendered equal to one third of the total recovery from both settlements plus related expenses. The remainder of the proceeds from the settlements were retained by Mr. Snyderman in escrow pending the resolution of the Funds claim for reimbursement.

Procedural Posture

On March 20, 2001, the Fund filed an action in the United States District Court for the District of Delaware[3] alleging that it was entitled to equitable relief pursuant to the civil action enforcement provisions of ERISA.[4] Specifically, the Fund requested a declaration that it was entitled to equitable relief to enforce the provisions of ERISA as it applied to the

[3] *Asbestos Workers Local No. 42 Welfare Fund v. Brewster*, 227 F. Supp.2d 226 (D.Del. 2002).

[4] *See* §502(a)(3) of ERISA, codified at 29 U.S.C. 1132(e)(2). As a fiduciary of the Plan, the civil action provision is the Fund's only vehicle for relief in seeking enforcement of the Plan in the federal courts. However, that section allows a fiduciary to seek only equitable relief.

Plan as well as to address the alleged violation of the terms of the Plan by the Brewsters. The Brewsters opposed that action and disputed the Fund's entitlement to the relief sought.

On January 8, 2002, the United States Supreme Court rendered a decision in *Great-West & Annuity Insurance Co. v. Knudson,*[5] which purported to directly impact the Fund's claims under ERISA. Shortly thereafter, the Brewsters moved to dismiss the federal action based upon *Knudson.* The Fund, also recognizing the significance of *Knudson*, filed a second action in the Court of Chancery of this State on March 13, 2002, which the Brewsters again opposed.[6] In any event, a stay of the Chancery Court litigation was granted pending the outcome of the federal action.

On October 22, 2002, the federal litigation was indeed dismissed in light of *Knudson*. The Court concluded that it did not have jurisdiction over the suit since the cause of action being advanced by the Fund, reduced to its essence, constituted a claim seeking a monetary judgment. Such a claim did not come within the scope of § 502(a)(3) which permits

---

[5] 534 U.S. 204 (2002).

[6] *Asbestos Workers Local No. 42 Welfare Fund v. Brewster and Snyderman*, Del. Ch. C.A. No. 19476, Chandler, C. (June 17, 2004)(ORDER).

only equitable claims.[7] The District Court also concluded that it did not have subject matter jurisdiction under § 502(a)(2) because the Brewsters and Mr. Snyderman were not fiduciaries within the meaning of 29 USC § 1109 based on case precedent.[8] The Chancery Court action was likewise dismissed on the ground that the claim was one seeking monetary damages, not equitable relief. It was not therefore within the jurisdiction of that court either.[9] The matter was transferred to this Court via 10 *Del. C.* § 1902.

Issues and Contentions Raised by the Parties

Throughout the course of this litigation, there have been three issues which each parties has argued, either separately or together, require the entry of judgment in their favor.

The first issue is whether the Plaintiff's claim against the Brewsters and Mr. Snynderman is barred because it constitutes an attempt to enforce a state law relating to an employee benefit plan which is preempted by ERISA. Neither side now disputes the conclusion which the District and Chancery Courts previously reached, i.e., that this litigation

---

[7] *Asbestos Workers Local No. 42 Welfare Fund,* 227 F.Supp.2d 228.

[8] *Id.*

[9] *Asbestos Workers,* Del. Ch. C.A. No. 19476, at 2.

is a claim seeking damages, not an equitable action. Consequently, it clearly does not fall within that provision of ERISA allowing such actions against ERISA covered employee benefit plans. If the Doctrine of Preemption applies, it is clear that the Plaintiff would have no means to obtain reimbursement of the monies it advanced to or on behalf of Mrs. Brewster pursuant to the Subrogation Agreement.

The Brewsters obviously argue that the Fund's suit "relates to" the welfare plan and should be preempted as a result. The Fund's response is that it should not be left without a forum in which to seek relief. Further, the Brewsters should be collaterally estopped from arguing the suit is preempted since in federal court they suggested that the instant suit was a state matter to be resolved by the Delaware state courts. Both sides cite case law in support of their respective positions, the majority of which favor the position advocated by the Brewsters and Mr. Snynderman.

The second area in controversy, assuming that the litigation is not preempted by ERISA, is whether the Fund is legally entitled to subrogation. The Brewsters contend that the answer is negative for two reasons. They contend that since the purpose of the agreement is to make sure that the

person causing the injuries, in this case, the driver that hit the Brewster vehicle, the Fund is not entitled to be reimbursed from the monies received from the UIM carrier covering Mrs. Brewster. Further, According to the Brewsters, settlements for injuries are designed to make the injured party whole which means being fully compensated for all injuries, including pain and suffering. Although it is not abundantly clear, they seem to argue that the monies received were for that purpose and were not therefore available to repay the Fund.

In response, the Fund asserts that the language of the Subrogation Agreement and the Plan documents make clear that repayment is required regardless of the source. Regarding the Brewsters right to be made whole, the doctrine is applicable only where the priority rules have not been established by the plan in question. In this case the Fund's priority was clearly established. Stated differently, the Fund is entitled to reimbursement from the monies the Brewsters received.

Mr. Snyderman contends that he has no obligation to the Fund because he was not a party to the Subrogation Agreement. Alternatively, he argues that the Fund must bear a share of the costs of the recovery of the monies received by the

Brewsters. The Fund's rejoinder is that Mr. Snyderman knew of the agreement and his duty to his clients does not supercede his obligation to adhere to its terms. Further, the Fund is not responsible for Mr. Snyderman's fees since he has been compensated out of the settlement funds awarded to the Brewsters.

DISCUSSION

Standard of Review

Summary judgment may be granted only where, considering the facts in a light most favorable to the nonmoving party, there are no material issues of fact.[10] Disposing of litigation via summary judgment is encouraged, when possible, to expeditiously and economically resolve lawsuits.[11] When the parties have filed cross-motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with

[10] *Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334 (Del. Super. Ct. 1973); and *Shultz v. Delaware Trust Co.*, 360 A.2d 576 (Del. Super. Ct. 1976).

[11] *Davis v. University of Del.*, 240 A.2d 583 (Del. 1968).

the motions.[12] It is in light of this standard that the contentions raised by the parties will be reviewed *ad seriatum* beginning with the question of ERISA preemption.

ERISA Preemption

ERISA welfare plans provide important protections for plan participants and their dependants. Many such welfare benefit plans, the instant plan included, require participants injured by a third party to reimburse the plan for any benefits the plan provides for the injury, if the participant later recovers money from the third party, e.g., as a result of a lawsuit or an out-of-court settlement. Courts have acknowledged that the requirement is valid.[13] However, a major source of contention is determining which venue is appropriate to hear a controversy involving the alleged breach of a subrogation agreement.

To seek relief in a federal court the claim must come within the scope of ERISA's civil action provisions which authorize a plan participant, beneficiary, or fiduciary (1) to

---

[12] Del. Super. Ct. Civ. R. 56(h).

[13] *See e.g. Bird v. NECA-IBEW Local 176 Health & Welfare Plan of Benefits*, 32 EBC 1743 (N.D. Ill. 2003); and *Kress v. Food Employers Labor Relations Assoc.*, 34 EBC 1007 (4th Cir. 2004).

enjoin any act or practice which violates the terms of the plan, or (2) to obtain other appropriate equitable relief to redress such violation or to enforce any provision or terms of the plan.[14] The United States Supreme Court stressed in *Knudson* that § 502(a)(3) only permits equitable relief and not money damages.[15] For that reason, the Fund's prior federal and Chancery Court suits were summarily dismissed. The Fund's claim was denoted by the Chancery Court as a "garden-variety breach of contract claim for which money damages is the sole form of relief to be awarded"[16] and subsequently transferred to this Court. The resultant issue is therefore whether the instant action based upon the breach of the Subrogation Agreement can be maintained in this Court considering the preemptive provisions of ERISA.

When passed by Congress, ERISA included a stipulation making the regulation of employee benefit plans exclusively a federal domain. The underlying philosophy was the preservation of flexibility for multi-state employers that desire to offer a single, uniform benefit plan on a regional

---

[14] § 502(a)(3) of ERISA, codified at 29 U.S.C. § 1132(a)(3).

[15] 534 U.S. at 220.

[16] *Asbestos Workers,* Del. Ch. C.A. No. 19476, at 2.

or nationwide basis. The relevant language dictates that ERISA shall "supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . ."[17] It is well established that courts read § 514(a) or ERISA as deliberately expansive and broadly construe the preemptive scope of the statute.[18] "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a 'connection with or reference to' such plan."[19]

The United States Supreme Court has expressly preempted common law tort and contract actions seeking damages for improper processing of disability claims.[20] During the past two decades, a number of appeals courts have read similar breadth into the preemption clause regarding breach of contract claims,[21] wrongful death claims[22] and common law bad faith actions against insurers.[23] The Fund cites no Delaware

---

[17] § 514(a) of ERISA, codified at 29 U.S.C. 1144(a).

[18] *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987); *and Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321, 1328 (5th Cir. 1992).

[19] *Pilot Life*, 481 U.S. at 47; *Shaw v. Delta Air Lines, Inc.* 463 U.S. 85, 96-87 (1983); and *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987).

[20] *Pilot Life*, 481 U.S. at 57.

[21] *Pane v. RCA Corp.*, 868 F.2d 631 (3rd Cir. 1989).

[22] *Settles v. Golden Rule Ins. Co.*, 927 F.2d 505 (10th Cir. 1991).

[23] *See Cocoran*, 965 F.2d 1321 (5th Cir. 1992); *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482 (7th Cir. 1996); *Stock v. Share*, 18 F.3d 1419 (8th Cir. 1994); *Johnson v. District 2 Marine Eng. Beneficial Ass'n.*, 857 F.2d 514 (9th Cir. 1988); *Kelley v. Sears, Roebuck and Co.*, 882 F.2d 453 (10th Cir.

decisions that have held to the contrary. This is for good reason since the issue continues to be one exclusively of federal concern.

The Fund seeks repayment of benefits conferred upon Mrs. Brewster, a plan dependent. Recovery is sought upon the basis that the Brewsters and their attorney breached the Subrogation Agreement as well as the subrogation clause contained in the Plan Document. The claim can only be delineated as one for breach of contract governed by common law contract principles. The Fund's argument is that this Court should hear the dispute because there is no forum available otherwise. Unfortunately for the Fund, this Court cannot at this time resolve the so-called "legal conundrum" the Fund claims is created by ERISA's broad preemption of state law claims.

As stated above, § 514(a) preempts state law whenever a state law has a connection with or reference to the underlying plan. State law claims that are not preempted will ordinarily be those that are peripheral, remote, or indirectly related to the plan at issue.[24] Here, the claims are filed by the Fund,

---

1989); *Straub v. Wester Union Te. Co.*, 851 F.2d 1262 (10th Cir. 1988); and *First Nat'l Life Ins. Co. v. Sunshine-Jr. Food Stores*, 960 F.2d 1546 (11th Cir. 1992).

[24] *Bucyrus-Erie Co. v. Department of Industry, Labor and Human Relations of State of Wis.*, 599 F.2d 205 (7th Cir. 1979).

a plan fiduciary. Recovery is sought from a Plan dependant pursuant to the provisions of the Plan as well as the supplemental Subrogation Agreement. As a result, there is a clear connection with the Plan. This is further evidenced by the parties' repeated references to the plan documents, the supplemental agreement and specific provisions therein as support for their respective positions. The suit regarding subrogation is therefore preempted by ERISA.

The net result of this analysis is that the Fund's cause of action cannot be maintained in this Court. In short, it appears to be without a legal mechanism thru which to obtain reimbursement of the monies paid to or on behalf of Mrs. Brewster. While this may be a harsh result, particularly given the fact that the Brewsters apparently agreed to reimburse the Fund without qualification in order to get the coverage in question, that is the law that Congress enacted. It is also the law that governs the result of this litigation.[25]

---

[25] Given this result, it is not necessary to reach the remaining contentions raised by the parties. More specifically, whether there is a subrogation right as to the UIM benefits paid to Mrs. Brewster is now moot since the suit cannot be maintained in this forum. The same conclusion holds true as to the claim against Mr. Snyderman. In addition, the Court has found no case where counsel for plan beneficiaries were deemed to have fiduciary obligations to the plan. In fact, a string of cases have held otherwise. *See e.g.*, *Useden v. Acker*, 947 F.2d 1563 (11th Cir. 1991); *Chapman v. Klemick*, 3 F.3d 1508 (11th Cir. 1993);and *Greenwood Mills, Inc. v. Burris*, 130 F.

CONCLUSION

_____Based upon the foregoing discussion, the Court concludes as a matter of law that the Fund's claim is preempted by § 514(a) of ERISA. The litigation must, as a result, be terminated. Accordingly, the motion for summary judgment filed on behalf of the Asbestos Worker Local Union No. 42 Welfare Fund is **denied**, and that filed by the Brewsters and Mr. Synderman **is granted**.

IT IS SO ORDERED.

_____
TOLIVER, JUDGE

Supp.2d 949 (M.D. Tenn. 2001). The assertion that Mr. Snyderman's knowledge of the subrogation right obligates him to adhere to its terms fails for a similar lack of legal support even if the entire case was not subject to preemption.