UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SUZANNE MONCRIEF, No. 2:10-cv-00534-MCE-KJN

Plaintiff,

v. **MEMORANDUM AND ORDER**

STANDARD INSURANCE COMPANY,

Defendant.

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Presently before the Court is a motion for summary judgment filed by Defendant Standard Insurance Company ("Standard"). Standard seeks a judicial determination from the Court that the group insurance plan at issue in this litigation is governed by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA"). In seeking that determination, Standard's objective is to limit Plaintiff Suzanne Moncrief's potential remedies here to those available under ERISA as opposed to remedies pertaining to the common law "bad faith" claim, for breach of the implied covenant of good faith and fair dealing, that Plaintiff has currently alleged. As set forth below, Standard's motion will be granted.

BACKGROUND

This matter arises from the June 23, 2008 death of Rick Moncrief in San Francisco. An autopsy revealed, in addition to alcohol, the presence of numerous drugs in Mr. Moncrief's body, including Soma, a muscle relaxant, Vicodin and dyhydrocodeine (both narcotic painkillers), Ambien, a sleeping aid, and Celexa, an anti-depressant. Medical examiner ruled that Moncrief died of acute mixed drug intoxication. Moncrief's medical records revealed drug abuse issues over the previous two years, including a self-referral in December of 2006 to address Vicodin abuse issues, and an assessment as a "substance abuser" just five months before his death.

At the time of his death, Moncrief worked for the Glenn-Colusa Irrigation District ("District"). As an employee of the District, Moncrief was a participant in a group insurance policy issued by Standard on January 1, 2001 to the Association of California Water Agencies ("ACWA") Service Corporation. ACWA is a private not-for-profit mutual benefit corporation engaged in advocacies and lobbying on behalf of its member water agencies.

The Glenn-Colusa Irrigation District had been a participating employer in the policy issued by Standard to the ACWA Service Corporation since its inception. It is undisputed that when Standard's policy was issued, it included both public and private employers.

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The life and accidental drug and dismemberment ("AD&D") coverage available under the policy was "noncontributory", meaning that all premium payments were made by the employer as opposed to the employees themselves. Moreover, by its terms the coverage was mandatory rather than voluntary for all eligible employees.

Standard paid Moncrief's life insurance benefit, but denied an additional AD&D claim made by his widow, Plaintiff Suzanne Moncrief ("Plaintiff") on grounds that such benefits were not payable when death was caused by "[t]he voluntary use of consumption of any position, chemical compound or drug, unless used or consumed according to the directions of a physician." See Ex. A, p. 4 to the Aff. of Holly Keeton in Support of Mot. for Summ. J.

Although it appears undisputed that the policy accrued to the benefit of both public and private employers at the time of its issuance in 2001, by amendment dated March 1, 2007, the named policyholder was changed from ACWA Service Corporation to ACWA Health Benefits Authority, which the ACWA website claims is a public agency responsible for the administration of employee benefit plans available to public agency members. Standard claims that the policy still allowed multiple employers to participate, however, with no requirement that employee participants be governmental employees.

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Plaintiff nevertheless alleges that before her husband's death Standard was notified that the ACWA plan no longer included any private employees. Although Standard changed certain ERISA disclosures as a result of that notification, it takes issue with the contention that no private employers remained covered under the ACWA plan. It points out the fact that ACWA itself, a California corporation, remains a participating employer under the plan.

Standard's rejection of Plaintiff's AD&D claim led to the filing of the instant lawsuit, which is predicated on a common law claim (for breach of the implied covenant of good faith and fair dealing) as a result of that denial. Standard now asks the Court to determine as a matter of law that Plaintiff's common law claim in that regard is preempted by the provisions of ERISA, and that Plaintiff's complaint must accordingly be amended to delete the claim as unavailable for a policy subject to ERISA.

STANDARD

The Federal Rules of Civil Procedure provide for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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).

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One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment practice, the moving party

> "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Rule 56(c).

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-587 (1986); First Nat'l Bank v. Cities Ser. Co., 391 U.S. 253, 288-289 (1968).

In attempting to establish the existence of this factual dispute, the opposing party must tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. Fed. R. Civ. P. 56(e). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987).

Stated another way, "before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed." Anderson, 477 U.S. at 251 (quoting Improvement Co. v. Munson, 14 Wall. 442, 448, 20 L. Ed. 867 (1872)). As the Supreme Court explained, "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts ... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 586-87.

ANALYSIS

Although the existence of an ERISA plan normally is a question of fact (Credit Manager's Ass'n of So. Cal. v. Kennnesaw Life and Acc. Ins. Co., 809 F.2d 617, 625 (9th Cir. 1987)), when the material facts are not in dispute the necessary determination can be made as a matter of law. See Crull v. GEM Ins. Co., 58 F.3d 1386, 1390 (9th Cir. 1995) (whether plan is subject to ERISA may properly be resolved on summary judgment).

Here, although Rick Moncrief's employer, the Glenn-Colusa Irrigation District, was undisputedly a public entity, the employee benefits policy at issue, as purchased by the District, was issued to ACWA Services Corporation, a California corporation.

The policyholder is therefore the ACWA Services Corporation and not the District. The District voluntarily chose to participate in a policy that included private employers and was issued to a private entity (ACWA being chartered as a California corporation under the California Corporations Code rather than as a public entity under the California Government Code).

In its 1974 passage of ERISA, which federalized much of employee benefit law, Congress included broad preemption provisions to insure uniformity and consistency. See Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 137 (1990). ERISA preempts state law causes of action that offer remedies for the violation of rights expressly guaranteed by ERISA and exclusively enforced by ERISA's civil enforcement mechanism. Tingey v. Pixley-Richards West, Inc., 953 F.2d 1124, 1130 (9th Cir. 1992). In the present case, there is no dispute that if Standard's policy is subject to the provisions of ERISA, the state common law claims for bad faith asserted by Plaintiff are preempted and therefore unavailable.

An employee welfare benefit plan is subject to ERISA if it is (1) a plan, fund or program; (2) established or maintained; (3) by an employer or by an employer organization, or by both; (4) for the purpose of providing medical, surgical, hospital care, sickness, accident, death, disability or other program benefits; (5) to participants or their beneficiaries. Kanne v. Conn. General Life Ins. Co., 867 F.2d 489, 491-92 (9th Cir. 1988).

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Standard's plan falls within this broad definition of a plan covered by ERISA. Indeed, as Standard points out, the ACWA Services Corporation requested that ERISA information be included within the initial plan documents, apparently because everyone understood that an ERISA plan was being established. See Stuart v. UNUM Life Ins. Co., 217 F.3d 1145, 1154 (9th Cir. 2000) (policy reference to ERSIA evidences intent to create a plan governed by ERISA).

Plaintiff nonetheless argues that the plan under which Rick Moncrief was covered must be deemed a "governmental plan", and as such subject to an explicit statutory exception to the purview of ERISA. 29 U.S.C. § 1003(b)(1); see Silvera v. Mutual Life. Ins. Co. of New York, 884 F.2d 423 (9th Cir. 1989). "The term 'governmental plan' means a plan established or maintained for its employees by the Government of the United States, by the government of any State of political subdivision thereof, or by any agency or instrumentality of any of the foregoing." 29 U.S.C. § 1002(32).

Here, the plan as issued included both public and private employers. In Kendall v. Standard Ins. Co., 17 F. Supp. 2d 1128 (E.D. Cal. 2003), the Eastern District addressed the question of whether such a mixed plan falls within the governmental plan exception in the context of the same ACWA plan that is the subject of this litigation.

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In Kendall, the participating employer in question was the Joint Powers Insurance Authority, an organization[1] described as "providing insurance services solely to the public agencies within ACWA." Id. at 1129 (emphasis added). The plaintiff in Kendall, like the Plaintiff herein, argued that because public water districts were included within ACWA, ACWA and its plan should be deemed an instrumentality or public subdivision of the state for ERISA purposes. The court rejected that argument, reasoning as follows:

> "[T]o hold, as plaintiffs argue, that the ACWA Plan is an ERISA-exempt governmental plan would permit ACWA's private members to circumvent the provisions of ERISA merely by participating in the ACWA Plan. ERISA was intended to broadly cover all private employers.... Accordingly, if a public entity chooses to participate in an ERISA plan that includes private employers, that public entity's plan becomes subject to the provisions of ERISA....To be entitled to the governmental plan exception– a narrow exception to ERISA coverage– a public entity must take steps to insure that the plan includes only public participants."

Kendall v. Standard Ins. Co., 17 F. Supp. 2d at 1132.

This Court adopts Kendall's reasoning as persuasive. The fact that a given employer is public or private is not the dispositive factor in determining whether a policy of group insurance is subject to ERISA.

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[1] Although Plaintiff alleges that the Joint Powers Insurance Authority, unlike Rick Moncrief's employer, was a private entity, a careful review of the Kendall opinion reveals no unequivocal support for that proposition. To the contrary, in addition to working only with public entities, and very use of the term "Authority" suggests a public, rather than private, organization.

Instead, the status of the plan itself, and specifically whether it includes private employers that are covered by ERISA, must be determinative, since otherwise a plan could escape ERISA protections simply by including private employees in addition to individuals working for public entities. The Court accordingly rejects the argument, as advocated by Plaintiff, that the applicability of ERISA should be bifurcated within the policy itself between governmental and non-governmental employees. As this Court has already noted in another case, any "contention that it is possible to divide ERISA plans into ERISA and non-ERISA portions has been universally rejected." Stenson v. Jefferson Pilot Financial Ins. Co., 2007 WL 1795757 at *3 (E.D. Cal. 2007). Instead, employee benefit programs are to be "construed as a whole." Id.[2]

The fact that Standard's Plan arguably changed in character in 2006 does not alter this analysis. Once subject to ERISA, a policy retains its ERISA character irrespective of whether plan participants change. Peterson v. Am. Life and Health Ins. Co., 48 F.3d 404, 408 (9th Cir. 1995); see also In re Stern, 345 F.3d 1036, 1041 (9th Cir. 2003) (ERISA status of employee welfare benefit plan determined by reference to the past).

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[2] The Court recognizes Plaintiff's reliance on the Ninth Circuit's decision in Silvera v. Mutual Life Ins. Co. of New York, supra, in arguing that if insurance is purchased by a governmental entity, the policy should be exempt from ERISA. Silvera, however, is distinguishable. It referred to the nongovernmental status of the plan insurer, and not the status of the entities who established the plan, as addressed by Kendall. Additionally, Silvera involved a plan issued to a single employer (the City of Oroville) rather than the ACWA plan at issue here which involved multiple employers.

Nor is the Standard plan exempt from treatment as an ERISA plan under the so-called "safe harbor" exemption. That exemption, as set forth in 29 C.F.R. § 2510.3, is available only if four separate criteria are satisfied. Stuart v. UNUM Life Ins. Co. of America, 217 F.3d 1145, 1149-53 (9th Cir. 2000). Those criteria include a prohibition on the employer making the contributions necessary to obtain the coverage, a requirement that the plan owner (in this case, ACWA) not "endorse" the coverage, and a requirement that employee participation be voluntary. Id. Here, it is uncontroverted not only that the employer, and not the employee, pays for the coverage, but also that employee contribution is in fact mandatory. On either ground, the "safe harbor" exemption fails. As the Ninth Circuit has recognized, "an employer's failure to satisfy [even] one of the safe harbor's four requirements conclusively demonstrates that an otherwise qualified group insurance plan is an employee welfare benefit plan subject to ERISA." Id. at 1150.

CONCLUSION

For all the foregoing reasons, summary judgment as requested by Standard is appropriate. Defendant Standard's Motion for Summary Judgment (ECF No. 8) is accordingly GRANTED.[3] The Court finds, as a matter of law, that the group insurance plan at issue in this litigation is governed by ERISA.

[3] Because oral argument would not be of material assistance, this matter was deemed appropriate for submission on the briefs. E.D. Cal. Local Rule 230(g).

Plaintiff is accordingly directed to file, within twenty (20) days following the date of this Memorandum and Order, a First Amended Complaint deleting any reference to state common law claims, like breach of the implied covenant of good faith and fair dealing as currently pled by Plaintiff, that are unavailable under ERISA.

IT IS SO ORDERED.

Dated: January 13, 2011

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE