

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION**

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<b>LISA GILBRIDE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
	)	<b>Case No. 13-CV-2047</b>
<b>HIGHMARK BLUE SHIELD OF PA,</b>	)	
<b>NANCI HOLT, and VESUVIUS,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

On November 7, 2013, Magistrate Judge David G. Bernthal filed a Report and Recommendation (#16) in the above cause. On November 21, 2013, Defendants, Highmark Blue Shield of PA, Nanci Holt, and Vesuvius, filed their Objection to Report and Recommendation (#17). Following this court’s careful de novo review of Judge Bernthal’s reasoning and Defendants’ Objection, this court agrees with Judge Bernthal’s recommendation that Defendants’ Motion to Dismiss (#10) be DENIED. This court notes that Defendants accepted Judge Bernthal’s invitation to support their argument that ERISA preempts Plaintiff’s claims of negligence against Holt and vicarious liability against Vesuvius. This court does not need to decide that question at this stage of the proceedings, however. This court agrees with Judge Bernthal’s thorough and well-supported analysis and concludes that dismissal of Plaintiff’s ERISA claim against Highmark, and her state law claims against Holt and Vesuvius (if these claims are determined to be preempted by ERISA), for failure to exhaust administrative remedies is premature at the pleading stage.

IT IS THEREFORE ORDERED THAT:

(1) The Report and Recommendation (#16) is accepted by this court.

(2) Defendant's Motion to Dismiss (#10) is DENIED.

(3) Plaintiff is allowed fourteen (14) days to file an amended complaint for the sake of clarity, but is not required to do so.

(4) This case is referred to Judge Bernthal for further proceedings.

ENTERED this 2<sup>nd</sup> day of December, 2013.

s/MICHAEL P. McCUSKEY  
U.S. DISTRICT JUDGE