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U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY: ald / SCANNED BY: 6/8-9-10

IN THE U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

<p>ROGER "ROCKY" ROSEMA,</p> <p>Plaintiff,</p> <p>v.</p> <p>BERT BELL/PETE ROZELLE NFL RETIREMENT PLAN BENEFITS ADMINISTRATORS, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, and THE ARIZONA CARDINALS FOOTBALL CLUB</p> <p>Defendants.</p>	<p>Civil Action No. 1:10-cv-777</p> <p>Paul L Maloney Chief U.S. District Judge</p>
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NOTICE OF REMOVAL

Defendant, the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Retirement Board" or "Board"), erroneously designated by Plaintiff as the "Bert Bell/Pete Rozelle NFL Retirement Plan Benefits Administrators," hereby removes this action to the United States District Court for the Western District of Michigan, Southern Division. The action was removed from the Circuit Court for the County of Kent, Michigan, Case No. 10-06763 – CK (James R. Redford, P-38462) (the "State Court Action"). As grounds for removal, the Retirement Board states as follows:

1. Plaintiff filed the State Court Action on or around July 6, 2010.

2. Plaintiff sent copies of the Complaint and Summons by certified mail to the Retirement Board's offices in Baltimore, Maryland. The Complaint and Summons were received there on July 12, 2010.¹

3. True and correct copies of the Complaint and all other documents received from Plaintiff are attached hereto as Exhibit 1.

4. In the Complaint, Plaintiff claims entitlement to benefits provided through the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan"), an employee benefit plan established under and governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.* The Plan is maintained for the purpose paying eligible participants and beneficiaries retirement, disability, and death benefits. *See* ERISA § 1002(1)-(3); 29 U.S.C. § 1002(1)-(3) (defining "employee benefit plan").

5. The Complaint concerns an alleged improper denial of Plan benefits. Specifically, the Complaint asserts one count for Plan benefits under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), ("Count One"); one count for breach of fiduciary duty under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), ("Count Two"); and one count for "breach of contract – failure to pay benefits and to provide documentation" ("Count Three"). (*See* Pl.'s Compl. pp. 6-8.)

6. Title 28, § 1441(a) of the United States Code permits removal of any civil action over which the district courts have original jurisdiction. 28 U.S.C. § 1441(a). Title 28, § 1331 provides that the district courts shall have original jurisdiction over actions arising under the laws of the United States. 28 U.S.C. § 1331 (federal question jurisdiction).

¹ The Retirement Board acknowledges receipt of the Complaint and related papers, but neither acknowledges the propriety of service of process, nor waives its right to challenge such service.

7. Count One alleges a claim for benefits under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (providing for action for benefits due under the terms of an ERISA plan, to enforce rights under the terms of the plan, or to clarify rights to future benefits under the terms of the plan). As such, Count One explicitly arises under the laws of the United States and presents a federal question. District courts of the United States have concurrent jurisdiction over such actions for benefits. ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

8. Count Two alleges a breach of fiduciary duty under ERISA § 502(a)(3) 29 U.S.C. § 1132(a)(3). As such, Count Two explicitly arises under the laws of the United States and presents a federal question. District courts of the United States have *exclusive* jurisdiction over such actions. ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

9. Count Three alleges a "breach of contract" based upon, *inter alia*, a purported failure to pay Plan benefits. Count Three is removable for multiple reasons:

A. Count Three is subject to the doctrine of "complete pre-emption" because a claim for ERISA plan benefits is necessarily federal in character. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987) (complete pre-emption recognizes that "Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character"); *see also, e.g., Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004) (ERISA § 502(a), 29 U.S.C. § 1132(a), has such "extraordinary pre-emptive power" that it "converts an ordinary state common law complaint into one stating a federal claim" for purposes of removal).

B. The ERISA civil enforcement statute, § 502(a), 29 U.S.C. § 1132(a), provides the exclusive remedy for recovery of benefits under an ERISA plan, and any state-law cause of

action that duplicates, supplements, or supplants the ERISA civil enforcement remedy is completely pre-empted by ERISA and removable. *Davila*, 542 U.S. at 209.

10. Based on the foregoing, the Retirement Board asserts that this action is properly removable under 28 U.S.C. § 1441 on the ground that this Court has original jurisdiction over this case under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).²

11. All other requirements for removal are satisfied here. In relevant part, 28 U.S.C. § 1446(b) requires notices of removal to be filed "within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based" The Complaint in this action was received on July 12, 2010. This notice of removal has been filed within thirty (30) days of receipt and, therefore, removal is timely.

12. Defendant National Football League Players Association consents to removal. See attached Exhibit 2. Counsel for the Retirement Board was advised by the Arizona Cardinals that Plaintiff agreed to dismiss them from this action, and that the notice of dismissal was to be filed immediately. Thus, the Arizona Cardinals will not be a defendant.

13. Written notice of this notice of removal will be given to all parties of record as required by law.

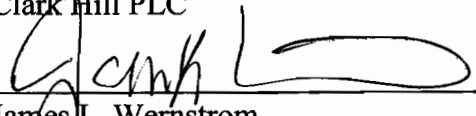
14. A true and correct copy of this notice of removal will be promptly filed with the State Court.

WHEREFORE, the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan hereby gives notice of its removal of this action to the United States District

² Plaintiff further alleges that his citizenship is diverse from all defendants. (Pl.'s Compl. p. 2.) Plaintiff also asserts that he is entitled to "more that \$100,000" in accrued benefits. (*Id.* at p. 8.) To the extent Plaintiff seeks in excess of \$75,000, this action is properly removable under 28 U.S.C. § 1441 on the separate and additional ground that this Court has original jurisdiction over this case under 28 U.S.C. § 1332 (diversity jurisdiction).

Court for the Western District of Michigan, Southern Division, from the Circuit Court for the County of Kent, Michigan.

Dated: August 5, 2010.

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