UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Barbara WIGGIN and Marcie WIGGIN, plaintiffs,	:	
	:	
v.	:	**3:02cv809(JBA)**
	:	
BRIDGEPORT HOSPITAL, INC. and MEDSPAN, INC., defendants.	:	

Ruling on Defendant Medspan's Motion to Dismiss [Doc. #16] and Defendant Bridgeport's Motion to Dismiss [Doc. #19]

For the reasons set forth below, defendants' motions to dismiss [Doc. ## 16 & 19] pursuant to Fed. R. Civ. P. 12(b)(6) are GRANTED.

I. Procedural and Factual Background[1]

By complaint signed April 12, 2002, plaintiffs Barbara Wiggin ("Barbara") and Marcie Wiggin ("Marcie") commenced the present suit in Connecticut Superior Court, alleging five state law causes of action (breach of contract, breach of duty

[1] Because defendants' motions are brought under Fed. R. Civ. P. 12(b)(6)(failure to state a claim upon which relief can be granted), all well-pleaded allegations of plaintiffs' amended complaint are accepted as true, see Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), and the Court's consideration is limited to the allegations of the amended complaint, documents incorporated in it by reference, see Brass v. Am. Film. Techs. Inc., 987 F.2d 142, 150 (2d Cir. 1993); see also Kramer v. Time Warner Inc., 937 F.2d 767, 773-74 (2d Cir. 1991), and items appearing in the record of this case, see 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1357 at 299 (2d ed. 1990); 1 Weinstein's Federal Evidence § 201.12[3] (2d ed. 2003).

of good faith and fair dealing, violation of Connecticut Unfair Trade Practices Act, negligent misrepresentation, and unjust enrichment) in connection with the failure of defendants Bridgeport Hospital, Inc. ("BH") and MedSpan, Inc. ("MedSpan") to reimburse expenditures for medical care provided to Marcie and allegedly covered under the terms of Barbara's health insurance contract with her employer BH.

On May 10, 2002, defendants removed the case to this Court, invoking federal question jurisdiction under 28 U.S.C. § 1331 on the grounds that Barbara's heath insurance coverage was through BH's group health plan as administered by MedSpan and that such plan constituted an employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974, 88 Stat. 832, as amended, 29 U.S.C. § 1001 et seq. ("ERISA"). Plaintiffs did not move to remand.

On July 15, 2002, the Court held a telephonic pre-filing conference to discuss, among other things, whether the five state law causes of action pleaded by plaintiffs were subject to dismissal by operation of 29 U.S.C. § 1144(a),[2] the preemption provision of ERISA. Plaintiffs' counsel was given

[2] "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975."

leave to amend, and, on August 6, 2002, filed an amended complaint alleging only four counts (fraudulent inducement, fraudulent misrepresentation, breach of fiduciary duty, and "common law") and principally seeking "medical and health insurance reimbursement for a medical condition which [plaintiffs were] told was covered under [plaintiffs'] health insurance coverage and other damages due [plaintiffs]." Nowhere in the amended complaint is there any mention of or reference to ERISA, any other statutory provision, or any federal cause of action.

Although styled differently, the first, second, and fourth counts (respectively for fraudulent inducement, fraudulent misrepresentation, and "common law") are essentially based on identical allegations: Barbara, employed as a registered staff nurse at BH, contracted for health and medical benefits under a plan for BH's employees administered by MedSpan; defendants' subsequent refusal to reimburse the costs of a specific kind of medical care provided to Marcie (who was covered under Barbara's insurance) revealed that Barbara had been fraudulently induced both initially to accept the coverage and subsequently to obtain the care for Marcie; the initial misrepresentations were contained in defendants' standardized materials and led plaintiffs to believe that the

type of care Marcie later required would be covered by the health and medical services available through MedSpan; the later misrepresentations were defendants' authorization and pre-certification of Marcie's care, even while intending (as demonstrated by the subsequent denial of benefits) not to pay for such care.

While the third count (breach of fiduciary duty) arises from the same factual nucleus as plaintiffs' other three causes of action, the allegations emphasize various deficiencies related to defendants' processing of Marcie's claim for reimbursement, including failure to provide adequate and/or legitimate explanations for the denial of the reimbursement, and failing to provide sufficient information and procedures to ensure that plaintiffs' claims for reimbursement would be properly considered, both initially and in the appeals process.

Presently pending are defendants' motions for dismissal pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiffs have not filed responses, which were due September 10, 2002.

II. Discussion

The gravamen of plaintiffs' claims is that they were fraudulently misled to believe that the health care insurance

provided under BH's plan for its employees would and did cover Marcie's specific medical costs. There is thus little doubt that such plan constitutes an "employee benefit plan" as defined in 29 U.S.C. § 1002(3). See Cicio v. Does 1-8, 321 F.3d 83, 87 and n.3 (2d Cir. 2003). As such, the preemption provision of 29 U.S.C. § 1144(a) is applicable.

In Cicio, the Second Circuit recently held that where, as here, a plaintiff's state law claims of misrepresentation or fraud concern the existence of benefits under an employee benefit plan, such claims are completely preempted under ERISA and thus necessarily conflict preempted and subject to dismissal under Fed. R. Civ. P. 12(b)(6). See Cicio, 321 F.3d at 92-94 & 96-97; see also Griggs v. E.I. Dupont de Nemours & Co., 237 F.3d 371, 378 (4th Cir. 2001). Accordingly, counts one, two, and four of plaintiff's amended complaint must be dismissed.

With respect to count three, the Court believes the allegations are properly construed as a common law cause of action for breach of fiduciary duty. Not only does the complaint fail to mention ERISA or any other statutory provision or federal cause of action, but such omission appears intentional in light of the Court's having invited plaintiffs to re-plead in the face of defendants' charge that

the claims in plaintiffs' initial complaint were subject to ERISA preemption. Accordingly, as the procedural deficiencies alleged in count three relate to negligent or bad faith processing of Marcie's claim for reimbursement of medical costs, that count is preempted by 29 U.S.C. § 1144(a) and must be dismissed. See Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 43 & 47-48 (1987); Cannon v. Group Health Service of Oklahoma, Inc., 77 F.3d 1270, 1273-74 (10th Cir. 1996).[3]

III. Conclusion

For the foregoing reasons, defendants' motions to dismiss [Doc. ## 16 & 19] are GRANTED. The Clerk is directed to close this case.

IT IS SO ORDERED.

/s/

_____

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 20th day of June, 2003.

[3] The Court notes that plaintiffs may have been able to replead their breach of fiduciary cause of action as a claim for equitable relief under 29 U.S.C. § 1132(a)(3)(B). However, having elected to proceed under a common law theory, count three is preempted and must be dismissed.