

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PHILIP GLYNN	:
Plaintiff,	:
	:
v.	: Civil No. 302CV 1802 (AVC)
	:
BANKERS LIFE AND	:
CASUALTY COMPANY	:
Defendant.	:

RULING ON THE DEFENDANT'S MOTION TO DISMISS

This is an action for damages in which the plaintiff, Philip Glynn, the beneficiary of an insurance policy, claims that the defendant, Bankers Life and Casualty Insurance Company ("Bankers Life") wrongfully refused to make payments in accordance with the policy. The action is brought pursuant to the Employment Retirement Security Act of 1974 (ERISA), 29 U.S.C. § 1001, the Connecticut Unfair Insurance Practices Act (CUIPA), Conn. Gen. Stat. § 38a-815, and the Connecticut Unfair Trade Practice Act (CUTPA), Conn. Gen. Stat. § 42-110b. Bankers Life has filed the within motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) arguing that the CUTPA and CUIPA causes of action fail to state a cause of action.¹

The issues presented are: 1) Whether the CUTPA cause of action is preempted by ERISA; and, 2) if so, whether the so

¹ The defendant has not challenged the ERISA cause of action.

called "savings clause" of ERISA saves the plaintiff's cause of action from preemption; and 3) whether the complaint states a CUIPA cause of action. For the reasons hereinafter set forth, the court concludes that: 1) the plaintiff's CUTPA cause of action is preempted by ERISA; 2) the savings clause does not protect the plaintiff's CUTPA cause of action; and 3) the complaint fails to state a CUIPA cause of action. Accordingly, the motion to dismiss (document no. 48) is GRANTED.

FACTS

The second amended complaint alleges the following: On or about June 8, 2001, Philip Glynn, father of the decedent, Peter Glynn, was the sole beneficiary of a group accident insurance policy issued by Bankers Life to the decedent's employer, Johnson & Johnson. Johnson & Johnson provided the policy as part of an employee benefit plan as defined by ERISA. The group life insurance policy provided for benefits payable upon an employee's accidental death.

On or about June 8, 2001, the plaintiff's decedent, Peter Glynn, died as a result of injuries sustained in a motor vehicle collision. Bankers Life subsequently refused to make payment in accordance with the group accident insurance policy. The benefit plan did not grant discretionary authority

to Bankers Life to determine eligibility for benefits or to construe the plan's terms.

STANDARD

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) involves a determination as to whether the plaintiff has stated a claim upon which relief may be granted. Fischman v. Blue Cross Blue Shield, 755 F. Supp. 528 (D. Conn. 1990). The motion must be decided solely on the facts alleged. Goldman v. Belden, 754 F.2d 1059, 1065 (2d Cir. 1985). A court must assume all factual allegations in the complaint to be true and must draw all reasonable inferences in favor of the non-moving party. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974). Such a motion should be granted only when no set of facts consistent with the allegations could be proven which would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). The issue is not whether the plaintiff will prevail, but whether he should have the opportunity to prove his claims. Id.

DISCUSSION

1. ERISA Preemption

Bankers Life first argues that "plaintiff's state law

claims are preempted by ERISA." Specifically, the defendant argues that ERISA Section 514 (a) preempts the plaintiff's CUTPA cause of action.

Glynn responds that the "[United States] Supreme Court has recently begun to limit the broad reach of ERISA preemption." Specifically, the plaintiff argues that in light of the recent opinion by the Supreme Court in New York State Blue Cross Plans v. Travelers Ins. Co., 514 U.S. 645, 115 S. Ct. 1671, 131 L. Ed. 2d 695 (1995), and its progeny, "[which] limit the broad reach of ERISA preemption," ERISA no longer preempts a CUTPA causes of action.

ERISA Section 514 (a) provides in relevant part that ERISA supercedes "any and all state law claims in so far as they may now or hereafter relate to any employment benefit plan." 29 U.S.C. § 1144(a). In Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983) the United States Supreme Court held that: "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 a plan." Shaw, 463 U.S. at 96-97. Thereafter, in Travelers the United States Supreme Court stated that "if 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes preemption would never run its course.

. . . We simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." Travelers Ins. Co., 514 U.S. 645, 655-56, 115 S. Ct. 1671, 1677, 131 L. Ed. 2d 695 (1995).

In Plumbing Industry Board, Plumbing Local Union No. 1 v. E.W. Howell Co., Inc., 126 F.3d 61 (2nd Cir. 1997) the Court of Appeals for the Second Circuit, citing Travelers, stated that:

"[A]nalysis under ERISA's preemption clause must begin with the starting presumption that Congress does not intend to supplant state law. . . . The Supreme Court [however] has identified several ways in which the anti-preemption presumption can be overcome. First, preemption will apply where a state law clearly "refers to" ERISA plans in the sense that the measure acts immediately and exclusively upon ERISA plans or where the existence of ERISA plans is essential to the law's operation. Second, a state law is preempted even though it does not refer to ERISA or ERISA plans if it has a clear connection with a plan in the sense that it mandates employee benefit structures or their administration or provides *alternative enforcement mechanisms*."

Plumbing Indus. Bd., 126 F.3d at 67 (emphasis added) (citing California Division of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc., 519 U.S. 316, 325, 117 S. Ct.

832, 838, L. Ed. 2d 791 (1997) and Travelers Ins. Co., 514 U.S. at 654-58) (internal quotations omitted).

With regard to an "alternative enforcement mechanism" the second circuit explained that "§ 502(a)[, codified at 29 U.S.C. § 1132(a),] was intended to be the exclusive remedy for rights guaranteed under ERISA. . . . Simply put, § 502(a) sets forth a comprehensive civil enforcement scheme that reflects the legislature's desire to include certain remedies and exclude others, and states are not free to add or subtract additional remedies to the mix, even if doing so would be helpful to the interests of plan beneficiaries or participants." Plumbing Indus. Bd., 126 F.3d 61, 68 (citations and internal quotation marks omitted). Consequently, a state cause of action is preempted under ERISA as an alternative enforcement mechanism if the state cause of action conflicts with an ERISA cause of action in that it "aim[s] to redress, through other means, violations of rules that § 502(a) is designed to enforce." Plumbing Indus. Bd., 126 F.3d 61, 69-70; Vartanian v. Monsanto Co., 14 F.3d 697, 700 (1st Cir. 1994).

Pursuant to these principles, the district court in Case v. Hospital of St. Raphael, 38 F. Supp. 2d 207 (D. Conn. 1999), concluded that the plaintiff's CUTPA claim was

preempted because it was an alternative enforcement mechanism. In Case, the plaintiff alleged that the defendants improperly withheld benefits under an ERISA plan. Case, 38 F. Supp. 2d at 208. The court concluded that the plaintiff's CUTPA claim "provides an alternative mechanism for enforcing the rights protected by ERISA's civil enforcement scheme." Case, 38 F. Supp. 2d at 208. Thus, because the plaintiff was using CUTPA's civil enforcement provisions to enforce his rights under the ERISA plan, a remedy specifically granted under ERISA, it was preempted as an alternative enforcement scheme. Case, 38 F. Supp. 2d at 208. Likewise, in Levine v. Hartford Insurance Co., No. 3:02CV0081(CFD), 2002 WL 1608330, at *2 (June 28, 2002 D. Conn.), the district court concluded that the plaintiff's CUTPA and CUIPA claims were preempted under ERISA because they sought, by way of the civil enforcement provisions of CUTPA, to enforce rights under the plan, a cause of action clearly provided for under ERISA. See also Lechleiter v. Clairol Inc., 245 F. Supp. 2d 432, 435-36 (CFEPA claim preempted because it "could easily be cast as a claim for violation of ERISA")

Applying these principles, the court concludes that, although CUTPA does not specifically refer to ERISA, the CUTPA cause of action is preempted as it has a clear connection with

a plan in that it provides an alternative enforcement mechanism. The alleged conduct underlying Glynn's CUTPA claim is that Bankers Life unfairly administered the plan and thereby altered his rights and benefits under the plan. In other words, Glynn is using CUTPA to enforce the rights and benefits that are allegedly due him pursuant to the plan. This is precisely the type of cause of action that may be brought pursuant to § 502(a) of ERISA. See 29 U.S.C. § 1132(a)(1)(B) (ERISA action may be brought "to recover benefits due . . . under the terms of his plan, to enforce . . . rights under the terms of the plan, or to clarify . . . rights to future benefits under the terms of the plan"); see also Case v. Hospital of St. Raphael, 38 F. Supp. 2d 207 (D. Conn. 1999). Likewise, to the extent that the CUTPA cause of action alleges improper processing of a claim, this is a cause of action provided for under ERISA. See Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 50, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987) (ERISA is "exclusive vehicle for actions by ERISA . . . beneficiaries asserting improper processing of a claim for benefits"). Consequently, because the CUTPA cause of action is being used as an alternative enforcement mechanism, the court concludes that Glynn's CUTPA claim is preempted by ERISA. See Case v. Hospital of St. Raphael, 38 F. Supp. 2d

207 (D. Conn. 1999) (rejecting plaintiff's argument that CUTPA claim was not preempted in light of Travelers and its progeny because, inter alia, CUTPA provided an alternative enforcement mechanism).

2. The ERISA "Savings Clause"

Glynn next maintains that "the CUTPA [cause of action falls] under ERISA's 'savings clause' and therefore, should not be preempted." Specifically, Glynn argues that the two-prong savings clause analysis, recently articulated by the United States Supreme Court in Kentucky Ass'n of Health Plans, Inc. v. Miller, 123 S. Ct. 1471, 155 L. Ed. 2d 468 (2003), now precludes preemption of his CUTPA cause of action. In other words, Glynn contends that, not only does the CUTPA cause of action affect risk pooling, but it relies on allegations of a breach of CUIPA, a statute purportedly directed at the insurance industry; consequently, his cause of action is "saved" from preemption.

The ERISA "savings clause," 29 U.S.C. § 1144 (b)(2)(A), provides in relevant part that "except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which *regulates insurance, banking, or securities.*"

(Emphasis added.)

In Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355, 366, 122 S. Ct. 2151, L. Ed. 2d 375 (2002) the United States Supreme Court stated that:

"[I]n deciding whether a law 'regulates insurance' under ERISA's saving clause, we start with a 'common-sense view of the matter under which a law must not just have an impact on the insurance industry, but must be specifically directed toward that industry.' We then test the results of the common sense enquiry by employing the three factors used to point to insurance laws spared from federal preemption under the McCarran-Ferguson Act², 15 U.S.C. § 1011 *et seq.*"

Rush Prudential, 536 U.S. at 365-66 (citing Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 50, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987)) (internal quotations omitted).

Thereafter, in Kentucky Ass'n of Health Plans, Inc. v. Miller, 123 S. Ct. 1471, 155 L. Ed. 2d 468 (2003), the United States Supreme Court overruled Rush to the extent that Rush required consideration of the three McCarran-Ferguson factors. Thus, consideration of the McCarran-Ferguson factors is no

² The "three criteria that have been used to determine whether a practice falls under the 'business of insurance' for the purposes of the McCarran-Ferguson Act [are]: First, whether the practice has the effect of transferring or spreading the policy holder's risk; second, whether the practice is an integral part of the policy relationship between the insurer and the insured; and third, whether the practice is limited to entities within the insurance industry." Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 48-49, 107 S. Ct. 1549, 1553-54, 95 L. Ed. 2d 39 (1987).

longer a component of savings clause analysis. Kentucky Ass'n of Health Plans, Inc. v. Miller, 123 S. Ct. 1471, 1479. The Kentucky Ass'n court provided the following new test for the savings clause analysis:

"[F]or a state law to be deemed a 'law...which regulates insurance' under § 1144(b)(2)(A), it must satisfy two requirements. First, the state law must be specifically directed toward entities engaged in insurance. Second, the state law must substantially affect the risk pooling arrangement between the insurer and the insured."

Kentucky Ass'n of Health Plans, 123 S. Ct. at 1479 (internal citations omitted). Any state law that satisfies this two part test is "saved" from preemption.

There is, however, a limited exception to the applicability of the savings clause. That exception provides that, even if the state law, or more particularly the state cause of action, falls within the savings clause, it may nevertheless be preempted where it conflicts with the civil enforcement provisions of ERISA. The exception finds its genesis in Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987), wherein the United States Supreme Court held that a bad faith cause of action was preempted regardless of the fact that the savings clause may have protected it from preemption. The court reasoned that the civil enforcement provisions of ERISA

are the "exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits." Pilot Life Ins. Co. V. Dedeaux, 481 U.S. 41, 52 (1987). Thus, congress intended to "displace state causes of action." Pilot Life Ins. Co. V. Dedeaux, 481 U.S. 41, 57 (1987). Accordingly, any state cause of action that added to the remedies available under ERISA conflicted with the express provisions of ERISA and was therefore preempted regardless of the savings clause. Pilot Life Ins. Co. V. Dedeaux, 481 U.S. 41, 56-7 (1987).

Although the United States Supreme Court subsequently trimmed the scope of the Pilot Life exception, see UNUM Life Ins. Co. of America v. Ward, 526 U.S. 358, 376 n.7, 119 S. Ct. 1380, 143 L.Ed.2d 462 (1999), it nevertheless reaffirmed its validity in Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355, 122 S.Ct. 2151, 153 L. Ed.2d 375 (2002). In Rush, the court explained the Pilot Life exception by stating that the "saving clause had to stop short of subverting congressional intent clearly expressed through the structure and legislative history, that the federal remedy displace state causes of action." Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355, 377. Consequently, the court reaffirmed the proposition that state causes of action that provide a "form of ultimate relief

in a judicial forum that added to the judicial remedies provided by ERISA" are preempted under Pilot Life regardless of the savings clause. Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355, 379.

The Second Circuit has yet to address the applicability of the Pilot Life exception to the savings clause in connection with a CUTPA cause of action. Nevertheless, the circuits that have addressed similar issues agree that an unfair trade practice act cause of action is barred under Pilot Life regardless of the savings clause's applicability. See, e.g., Hotz v. Blue Cross & Blue Shield of Massachusetts, Inc., 292 F.3d 57, 60-1 (1st Cir. 2002) (Massachusetts unfair trade practice cause of action barred under Pilot Life regardless of savings clause); Ramirez v. Inter-Continental Hotels, 890 F.2d 760, 763-64 (5th Cir. 1989) (Texas unfair insurance practices act cause of action barred under Pilot Life); see also In Re Life Insurance Company of North America, 857 F.2d 1190, 1194-95 (8th Cir. 1988) (Missouri vexatious refusal to pay insurance benefits statutory cause of action barred under Pilot Life).

Recently, the ninth circuit, in Elliot v. Fortis Benefits Insurance Comp., 337 F.3d 1138 (9th Cir. 2003), addressed the validity of the Pilot Life exception in connection with a

cause of action brought under the Montana Unfair Trade Practice Act ("UTPA"). In Elliot, the plaintiff was denied long term disability benefits under an ERISA plan. Elliot v. Fortis Benefits Insurance Comp., 337 F.3d 1138, 1141. Elliot filed suit alleging, inter alia, that the defendant had violated UTPA by denying her benefits. Elliot sought compensatory and punitive damages under UTPA. The ninth circuit concluded that her UTPA claim "involv[ed] the sort of additional claim or remedy exemplified in Pilot Life" because it relied on the civil enforcement provisions of UTPA and sought damages beyond those authorized under ERISA. Elliot v. Fortis Benefits Insurance Comp., 337 F.3d 1138, 1147 (quoting Rush Prudential HMO, Inc. V. Moran, 536 U.S. 355, 380). Consequently, the claim was preempted regardless of the savings clause.

Applying these principles the court concludes that, regardless of the savings clause, the CUTPA cause of action is preempted under Pilot Life. First, Glynn's cause of action is brought pursuant to the civil enforcement provisions of CUTPA. Moreover, the complaint indicates that Glynn is seeking compensatory and punitive damages pursuant to CUTPA. Such damages are not permitted under ERISA. Consequently, the CUTPA cause of action conflict directly with the civil

enforcement provisions and therefore is preempted notwithstanding the savings clause.

3. The CUIPA Cause of Action

Bankers Life next argues that the complaint does not state a CUIPA cause of action. Specifically, the defendant argues that Connecticut law does not provide for a private cause of action under CUIPA.

Glynn responds that a valid CUIPA cause of action is stated. Specifically, the plaintiff argues that several lower courts have held that a private cause of action does arise under CUIPA.

In Lander v. Hartford Life & Annuity Insurance Co., 251 F.3d 101 (2001) the Court of Appeals for the Second Circuit held that "Although not yet conclusively decided by the Connecticut Supreme Court, most federal and Connecticut state courts have determined that the Connecticut Unfair Insurance Practices Act . . . does not provide a private cause of action." Lander, 251 F.3d at 118-19; see also Martin v. American Equity Ins. Co., 185 F. Supp. 2d 162, 166 (D. Conn. 2002); Peterson v. Provident Life & Acc. Ins. Co., No. 3:96CV2227(AHN), 1997 WL 527369, at *1-2 (D. Conn. July 17, 1997); Thompson & Peck, Inc. v. Reliance Ins. Co., No. CV990267591S, 2001 WL 1178596, at *2 (Conn. Super. Ct. Aug.

30, 2001); Chieffo v. Yanielli, No. CV000159940, 2001 WL 950286, at *4 (Conn. Super. Ct. July 10, 2001); Joseph v. Hannan Agency Inc., No. 323310, 1997 WL 15424, at *1 (Conn. Super. Ct. Jan. 9, 1997); Stabile v. S. Conn. Hosp. Sys., Inc., No. 326120, 1996 WL 651633, at *3 n. 6 (Conn. Super. Ct. Aug. 24, 1995).

The court of appeals further stated that: “[I]n Mead v. Burns, 199 Conn. 651, 509 A.2d 11 (Conn. 1986), the Connecticut Supreme Court characterized CUIPA as a penal statute requiring a construction ‘limiting rather than expanding civil liability’ - further supporting the proposition that no private cause of action is available under the statute.” Lander v. Hartford Life & Annuity Insurance Co., 251 F.3d 101 at 119 (2001).

In accordance with Lander this court concludes that CUIPA does not provide a private cause of action and therefore Bankers Life’s motion to dismiss the CUIPA cause of action is granted.

CONCLUSION

Based on the foregoing reasons, the defendant’s motion to dismiss (document no. 48) is GRANTED.

It is so ordered, this _____ day of December, 2003, at Hartford, Connecticut.

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Alfred V. Covello
United States District Judge