UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MAINE COAST MEMORIAL HOSPITAL, Plaintiff v. NORMA SARGENT, Defendant	Civil No. 05-13-P-C
NORMA SARGENT, Third-Party Plaintiff v. WAL-MART STORES, INC. & HARVARD PILGRIM HEALTH CARE, Third-Party Defendants	

Gene Carter, Senior District Judge

ORDER GRANTING THIRD-PARTY DEFENDANT WAL-MART STORES, INC.'S MOTION TO DISMISS

Plaintiff Maine Coast Memorial Hospital (hereinafter "Hospital") commenced this action against Defendant Norma Sargent in the District Court of the State of Maine to recover for allegedly unpaid medical bills. Defendant Sargent filed a third-party complaint against her employer, Wal-Mart Stores, Inc. (hereinafter "Wal-Mart"),[1] and Harvard Pilgrim Health Care. Defendant Wal-Mart removed the case to this Court

[1] Wal-Mart states that Plaintiff has incorrectly named "Wal-Mart, Inc." as the Third-Party Defendant in this action when in fact the proper Defendant is "Wal-Mart Stores, Inc."

pursuant to 28 U.S.C. §§ 1331 and 1441, alleging that Ms. Sargent's claims arise under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* (hereinafter "ERISA").

Now before the Court is Wal-Mart's Motion to Dismiss (Docket Item No. 5). Wal-Mart alleges that Ms. Sargent's state law claims are preempted by ERISA and that Ms. Sargent does not state a claim for recovery of benefits against her employer. For the reasons set forth below, the Court will grant Wal-Mart's motion.

I. Applicable Legal Standard

Wal-Mart's Motion to Dismiss invokes Fed. R. Civ. P. 12(b)(6). Wal-Mart is entitled to dismissal for failure to state a claim only if "it appears to a certainty that the plaintiff would be unable to recover under any set of facts." *State St. Bank & Trust Co. v. Denman Tire Corp.*, 240 F.3d 83, 87 (1st Cir. 2001). The Court must "accept as true the well-pleaded factual allegations of the complaint, draw all reasonable inferences therefrom in the plaintiff's favor, and determine whether the complaint, so read, sets forth facts sufficient to justify recovery on any cognizable theory." *TAG/ICIB Servs. v. Pan Am. Grain Co.*, 215 F.3d 172, 175 (1st Cir. 2000).

II. ERISA Preemption

The provisions of ERISA "supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan …." 29 U.S.C. § 1144(a). Express "ERISA preemption analysis . . . involves two central questions: (1) whether the plan at issue is an 'employee benefit plan' and (2) whether the cause of action 'relates to' this employee benefit plan." *McMahon v. Digital Equip. Corp.*, 162 F.3d 28, 36 (1st Cir. 1998). The plan at issue in this case unambiguously states:

> The Plan is an employer-sponsored, health and welfare employee benefit plan governed under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Plan offers fully insured Medical, Disability, Accidental, and Life benefits, as well as self-insured Medical and Dental benefits.

Wal-Mart 2004 Associate Guide (attached as Exhibit A to Third-Party Defendant Wal-Mart's Motion to Dismiss).[2] Ms. Sargent does not dispute that the employee benefit plan at issue in this case qualifies as a "plan" under ERISA.

The second prong of preemption analysis is also satisfied in this case. "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 v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983). Ms. Sargent's Third-Party Complaint seeks an award of damages for her insurer's alleged failure to pay health care costs to Plaintiff Hospital. This claim clearly "relates to" the employee benefit plan offered to Wal-Mart employees as any determination regarding whether Ms. Sargent is entitled to health care coverage is dependent on the application of the terms set forth in the plan. Because the Court will be required to evaluate the terms of the plan to resolve this dispute, Ms. Sargent's state law claims are preempted by ERISA.

[2] Ordinarily, in deciding a motion to dismiss, a court may not consider any document outside of the complaint, or not expressly incorporated therein, unless the motion is converted into one for summary judgment. *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993). There is a narrow exception "for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint." *Id.; see also Young v. Lepone*, 305 F.3d 1, 11 (1st Cir. 2002) ("when the factual allegations of a complaint revolve around a document whose authenticity is unchallenged, that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6).") (citations and internal quotation marks omitted). Ms. Sargent has not objected to the authenticity of the Plan sections provided by Wal-Mart, and the Court is satisfied that the provisions of the Plan submitted by Wal-Mart are central to Third-Party Plaintiff's claim.

III. Wal-Mart as a Proper Defendant

Wal-Mart next contends that as Ms. Sargent's employer, it is not a proper defendant in a cause of action seeking payment of plan benefits allegedly due. Ms. Sargent's claim for monetary benefits arises under ERISA's civil enforcement provision, 29 U.S.C. § 1132. Under section 1132, a civil action may be commenced "to recover benefits due to [her] under the terms of [her] plan, to enforce [her] rights under the terms of the plan, or to clarify [her] rights to future benefits under the terms of the plan." *Id.* § 1132(a)(1)(B). Ms. Sargent seeks damages equal to any damages found owing by her to Plaintiff Hospital. As such, she is seeking benefits that she contends were wrongfully withheld under the terms of the plan. Under the terms of ERISA, "[a]ny money judgment under this title against an employee benefit plan *shall be enforceable only against the plan as an entity* and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title." *Id.* § 1132(d)(2) (emphasis added). Accordingly, the proper defendant for recovery of plan benefits is the Plan, not the employer.

Ms. Sargent next asserts that Wal-Mart is a proper defendant because it is a "fiduciary" as defined by 29 U.S.C. § 1002(21)(A)(iii) (a person is a fiduciary to the extent "he has any discretionary authority or discretionary responsibility in the administration of such plan"). *See* Memorandum in Opposition to Wal-Mart Stores, Inc.'s Motion to Dismiss (Docket Item No. 13) at 1. However, Wal-Mart is not a named fiduciary under the terms of the "Associates' Health and Welfare Plan." *See* Wal-Mart 2004 Associate Guide (attached as Exhibit A to Third-Party Defendant Wal-Mart's Motion to Dismiss) at 162. Although fiduciary status may arise based upon the actions of

an employer, *see, e.g.*, *Watson v. Deaconess Waltham Hosp.*, 298 F.3d 102, 111 (1st Cir. 2002) ("[f]iduciary status with respect to the administration or management of the plan 'may arise from the . . . employer's exercise of the responsibilities of the plan administrator although the employer has not been so formally designated, or from the employer's exercise of *de facto* control over the plan administrator or other parties responsible for the management of the plan.'") (quoting J.F. JORDAN, ET AL., HANDBOOK ON ERISA LITIGATION § 3.02[B], at 3-33 (2d ed. 2001)) (footnotes omitted), Ms. Sargent has not set forth any allegations to this effect. Her Complaint only states that she "sought the assistance of Walmart, [sic] but her employer also takes the position that she was not a covered employee." Third-Party Complaint (attached as Exhibit 4 to Wal-Mart's Notice of Removal (Docket Item No. 1)) ¶ 6. This lone paragraph does not allege that Wal-Mart was indeed acting as a plan fiduciary and exercising *de facto* control over the plan administrator.[3] Because the Complaint only states a claim for recovery of plan benefits and does not state a claim for breach of any fiduciary duty,[4] the proper defendant in this third-party action is the Plan, not the employer.

IV. Conclusion

For the reasons set forth above, the Court **FINDS** that the claims set forth in Third-Party Plaintiff's Complaint are preempted by ERISA, 29 U.S.C. § 1144(a). It is therefore **ORDERED** that Third-Party Defendant Wal-Mart's Motion to Dismiss be, and

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[3] Ms. Sargent's Complaint also fails to state a claim against Wal-Mart because it does not allege breach of any fiduciary duty. It is well established that to advance a claim of breach of fiduciary duty pursuant to Section § 502(a)(2) of ERISA, the plaintiff must assert recovery for the employee benefit plan as a whole, as opposed to individual relief. *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 144, 105 S. Ct. 3085, 87 L. Ed. 2d 96 (1985); *Watson*, 298 F.3d at 110.

[4] Ms. Sargent's Complaint also does not state a claim that would bring it within the so-called ERISA "catch-all" provision, 29 U.S.C. § 1132(a)(3).

it is hereby, **GRANTED** and the Third-Party Complaint against Wal-Mart be, and it is hereby, **DISMISSED**. It is **FURTHER ORDERED** that Third-Party Plaintiff shall have fifteen (15) days to amend her Complaint to allege an ERISA claim against Third-Party Defendant Harvard Pilgrim Healthcare. Failure to do so will result in this Court remanding the above captioned action to the courts of the State of Maine.[5]

/s/ Gene Carter
GENE CARTER
United States Senior District Judge

Dated at Portland, Maine this 10th day of March, 2005.

[5] The Court is cognizant of the fact that there is no independent basis for federal jurisdiction in Plaintiff Hospital's Complaint.

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