

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CORY SCHEIDLER,

Plaintiff,

v.

UNITED WISCONSIN INSURANCE
COMPANY,

Defendant.

ORDER
and
OPINION

00-C-0393-C

This civil action for recovery of certain long term disability benefits payments was removed from state court by defendant United Wisconsin Insurance Company and is before the court now on plaintiff Cory Scheidler's motion for remand and defendant's motion to dismiss. (Because defendant was relying on facts not contained in the complaint to defeat plaintiff's motion to remand, the motion was converted to one for summary judgment.) Plaintiff sued in state court on a breach of contract claim, contending that he had been denied the benefits to which he was entitled under his contract of insurance with defendant. I conclude that the "contract" in dispute is a qualified disability benefits program under the Employee

Retirement Income Security Act, that ERISA preempts state court actions and that any claim for benefits must be brought in federal court. Plaintiff's motion to remand will be denied but defendant's motion will be denied as well because plaintiff's complaint is sufficient to state a claim for benefits under ERISA.

UNDISPUTED FACTS

Plaintiff Cory Scheidler is a resident of Portage County, Wisconsin. From October 3, 1997 to April 3, 1999, plaintiff was employed by Extrusion Dies, Inc. Defendant United Wisconsin Insurance Company is a domestic corporation with its principal place of business in Milwaukee, Wisconsin.

On May 24, 2000, plaintiff filed a complaint in the Circuit Court for Portage County, Wisconsin. Plaintiff alleged only one cause of action: that defendant had denied his claim for disability benefits improperly, thereby breaching its contract with plaintiff. Defendant removed the case on June 23, 2000, and filed a motion to dismiss on the ground that plaintiff's state law breach of contract claim is preempted by the Employee Retirement Income Security Act of 1974. Later, plaintiff filed a motion to remand. On September 8, 2000, the court converted defendant's motion to dismiss to a motion for summary judgment.

Plaintiff's former employer, Extrusion Dies, Inc., contracted with defendant to provide

long term disability coverage for its employees from July 1992 through December 1999. Extrusion Dies was the policyholder of the disability policy issued by defendant. The policy afforded longterm disability coverage and benefits to Extrusion Dies' employees, as part of a larger package of fringe benefits that Extrusion Dies provided.

During the years 1998-1999, Extrusion Dies paid 100% of the premiums for the first \$32,000 in coverage for each of its employees. For employees with annual salaries exceeding \$32,000, the employee could pay a nominal premium for additional disability coverage. Employees were enrolled in the disability program automatically and mandatorily on the first day of the month following a 30-day probationary period.

While plaintiff was working with Extrusion Dies, he was provided long term disability coverage under the policy defendant issued to the company. Because his salary never exceeded \$32,000, the company paid all of the premiums for his long term disability coverage.

In addition to paying premiums for the policy, Extrusion Dies assisted in certain arrangements relating to the long term disability policy, including serving as an intermediary or liaison between its employees and defendant. Extrusion Dies employees assisted employees in submitting claims to defendant. On March 17, 1999, an Extrusion Dies employee, Penny Crowley, helped plaintiff prepare his claim for benefits under the policy. Defendant denied the claim on April 23, 1999. Plaintiff appealed the denial without success.

OPINION

The initial question is whether Extrusion Dies' long term disability benefits program was an employee welfare benefit plan as defined in ERISA. Such a plan has five elements: it must be a 1) plan, fund or program; 2) established or maintained; 3) by an employer; 4) to provide medical, disability and other benefits; 5) to participants or their beneficiaries. See Ed Miniati, Inc. v. Globe Life Ins. Group, Inc., 805 F.2d 732, 738 (7th Cir. 1986). If it is, then defendant removed this case properly, because ERISA preempts almost all state laws and causes of action that relate to employee benefit plans. See Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48 (1987).

It is evident that Extrusion Dies' benefits program meets the criteria of an ERISA plan: it is a program established and maintained by Extrusion Dies for the benefit of its employees and it provides disability benefits to its employees. Plaintiff's only rebuttal is that the program does not have all of the trappings of an ERISA plan, in the form of certain annual filings and separate summary plans. Plaintiff cites no law that says that every ERISA plan must have such formalities. To the contrary, the courts have construed benefits plans broadly, so as not to exclude certain plans from federal court scrutiny simply because the administrator has failed to meet its responsibilities. See, e.g., Donovan v. Dillingham, 688 F.2d 1367, 1372 (11th Cir. 1982) (noting incongruity of allowing persons who establish informal employee benefit plans

to escape the act because they fail to comply with reporting and fiduciary standards).

Plaintiff's motion to remand will be denied because the plan in question is governed by ERISA. Defendant's motion to dismiss will be denied as well because plaintiff's complaint is sufficient to make out a claim under § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). See Bartholet v. Reishauer A.G. (Zurich), 953 F.2d 1073, 1078 (7th Cir. 1992) (noting futility of amending to allege what court has found is only possible interpretation of complaint). Just as defendant has argued, plaintiff's complaint states a claim that arises under ERISA and not under state contract law.

ORDER

IT IS ORDERED that plaintiff Cory Scheidler's motion to remand this case to state court is DENIED, as is defendant United Wisconsin Insurance Company's motion to

dismiss the complaint for failure to state a cause of action.

Entered this 31st day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge