

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

BRYAN D. TOURDOT,

Plaintiff,

v.

ROCKFORD HEALTH PLANS, INC.,

Defendant.

ORDER

04-C-0404-C

Plaintiff Bryan D. Tourdot filed a complaint against defendant Rockford Health Plans, Inc. in state court, alleging that he had been injured in an accident, that defendant had refused to pay his medical bills and that the refusal constituted common law breach of contract and bad faith under Wisconsin law. Defendant removed the case to federal court on the ground that the insurance plan is an employer sponsored group health plan issued through plaintiff's employer and is governed by the Employee Retirement Income Security Act.

Plaintiff did not object to removal and has conceded that his state law claims are preempted by ERISA. He has submitted a proposed amended complaint alleging a claim against defendant under ERISA.

The case is before the court on defendant's motion to dismiss plaintiff's complaint. The motion will be granted, as will plaintiff's implicit motion to substitute his proposed amended complaint.

ORDER

IT IS ORDERED that defendant Rockford Health Plans, Inc.'s motion to dismiss the complaint in this case is GRANTED; and plaintiff Bryan D. Tourdot's motion to substitute his proposed amended complaint for the dismissed complaint is GRANTED. Defendant may have until September 7, 2004 in which to serve and file its answer to the amended complaint.

Entered this 16th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge