

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

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WILLIAM YONKER,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.  
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OPINION and ORDER

06-C-673-C

Plaintiff William Yonker was injured in 1990 in a work-related accident that occurred while he was employed by a United Parcel Service (UPS) subsidiary. According to plaintiff, shortly after the accident he and defendant UPS executed a “Release and Settlement Agreement,” which entitled plaintiff to continued retirement health insurance and disability benefits under UPS’s standard plans.

In 2004, defendant determined that plaintiff no longer met the plan’s definition of disability and terminated his health and disability benefits. Plaintiff contends that when defendant terminated his benefits, it breached the parties’ settlement agreement. On October 25, 2006, plaintiff filed this civil action for monetary relief in the Circuit Court for Oneida County, Wisconsin, alleging breach of contract. On November 16, 2006, defendant removed

the case to this court pursuant to 28 U.S.C. § 1441(b), contending that the court has subject matter jurisdiction under 28 U.S.C. § 1331 and the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, because plaintiff's action is a claim for employee benefits.

The case is before the court on plaintiff's motion to remand. Because plaintiff's claim for breach of the parties' settlement agreement is preempted completely by ERISA, subject matter jurisdiction exists under 28 U.S.C. § 1331. Therefore, the motion will be denied.

For the purpose of deciding the motion, I draw the following facts from plaintiff's complaint, defendant's notice of removal, and documents the parties have submitted in connection with the motion.

### JURISDICTIONAL FACTS

Plaintiff William Yonker is a citizen of Wisconsin, residing in Oneida County. Defendant UPS is a corporation, with its principal place of business in Atlanta, Georgia.

Plaintiff was an employee of a UPS subsidiary. (It is not clear when or for how long plaintiff was employed by the unnamed subsidiary.) In 1990, plaintiff was injured in a work-related accident caused by a defective product, and subsequently applied for long-term disability benefits, which UPS granted in April 1992. At that time, plaintiff became eligible for health benefits under the UPS Retired Employees Health Care Plan.

According to plaintiff, in January 1994, plaintiff and UPS executed a “Release and Settlement Agreement,” which entitled plaintiff to continued retirement health insurance and disability benefits under UPS’s standard plans. Plaintiff argues that the terms of the agreement entitle him to lifetime benefits. In response, defendant asserts that although the agreement contains a waiver of any provisions in the standard plans that would reduce or deny benefits normally covered by worker’s compensation, the agreement states clearly that: “all other provisions of the health insurance contract will remain in force and effect” and that “[a]ll other terms of the disability policy would remain in force and effect.” Therefore, defendant argues, the agreement does not confer any lifetime benefits because any provisions in the plans regarding eligibility for continued benefits still apply.

In 2003, Broadspire Services, Inc., the UPS disability plan claims administrator, determined that plaintiff no longer met the plan’s definition of disability. Consequently, in June 2004, plaintiff stopped receiving both long-term disability benefits and associated health insurance benefits. Plaintiff contends that the benefits termination is a breach of contract because the settlement agreement conferred lifetime disability and health benefits.

On October 25, 2006, plaintiff filed this lawsuit in the Circuit Court for Oneida County, naming UPS as defendant. On November 16, 2006, defendant removed the case to this court.

## OPINION

In 1974, Congress enacted ERISA to "protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries." 29 U.S.C. § 1001(b). To promote uniformity, ERISA contains a "pre-emption clause" which provides that ERISA supersedes all state laws insofar as they "relate to any employee benefit plan." § 514(a), 29 U.S.C. § 1144(a). Further, the United States Supreme Court has held that state common law claims are not only preempted by ERISA, but are also displaced by ERISA's civil enforcement provision, § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58 (1987). Therefore, although usually "well-pleaded complaints" will stay in the court in which they are filed, complaints filed in state courts can be removed to federal court under 28 U.S.C. § 1441(b) if the complaint's state common law claims are preempted by ERISA and come within the scope of § 502(a)(1)(B).

Both parties agree that the test developed by the Seventh Circuit in Jass v. Prudential Health Care Plan, Inc., 88 F.3d 1482 (7th Cir. 1996), should be used to decide whether plaintiff's claim is preempted by ERISA. Under the Jass test, plaintiff's action is completely preempted if (1) plaintiff is eligible to bring a claim under ERISA §502(a); (2) plaintiff's cause of action falls within the scope of an ERISA provision that plaintiff can enforce via § 502(a); and (3) plaintiff's state law claim cannot be resolved without an interpretation of contracts governed by ERISA. Plaintiff's claim satisfies all three factors; therefore, ERISA

preempts plaintiff's state law claim.

A. Plaintiff's Eligibility to Bring a Claim under § 502(a) of ERISA

The first element of the Jass test is whether plaintiff is eligible to bring a claim under § 502(a) of ERISA, which lists persons empowered to bring claims, including plan participants and beneficiaries. For the purposes of ERISA, Congress defines a "participant" as "any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit." 29 U.S.C. § 1002(7). A "beneficiary" is "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8).

Plaintiff denies that he is a participant because he was employed by a UPS subsidiary and not by UPS. Although he asserts entitlement to health and disability benefits, he maintains that his entitlement derives solely from his settlement agreement and not from his status as a participant in an ERISA-governed plan. However, as defendant points out and plaintiff does not dispute, plaintiff was already receiving benefits from the health and disability plans at the time the parties entered into the settlement agreement. For plaintiff

to have received benefits under these plans before the settlement agreement was executed, he must have been found to be an eligible employee or former employee (a participant) or otherwise entitled to benefits under the terms of the employee benefit plan (a beneficiary). The settlement agreement may have expanded plaintiff's rights under the plans, but it did not create them. Because plaintiff has been a participant or beneficiary of the health and disability plans, he is entitled to bring a claim under § 502(a) and meets the first prong of the Jass test.

B. Enforcement of Rights under § 502(a)

The second element of the Jass test is whether plaintiff's cause of action falls within the scope of an ERISA provision that plaintiff can enforce pursuant to § 502(a). Section 502(a)(1)(B) authorizes a plan participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 28 U.S.C. 1132(a)(1)(B). Further, § 502(a)(3)(B) provides that under ERISA, a participant can seek to obtain "other appropriate equitable relief (I) to redress [violations of this subchapter or terms of the plan] or (ii) to enforce any provisions of this subchapter or the terms of the plan."

Plaintiff contends that because he cannot enforce the settlement agreement under § 502(a), his claim does not meet this element of the Jass test. However, plaintiff's

claims are not limited to breach of the settlement agreement. In his complaint, plaintiff seeks compensatory damages arising from the breach of defendant's standard health and disability policies as well. A claim for compensatory damages for violation of defendant's policies would fall under § 502(a)(3)(B)(I), which allows plaintiffs to seek equitable relief for plan violations. Although plaintiff may not be able to obtain all the relief he seeks by proceeding under § 502(a), at least a portion of that relief falls within the scope of § 502(a)(3)(B)(I).

### C. Interpretation of Contracts Governed by ERISA

Finally, the third element of the Jass test is that plaintiff's state law claim cannot be resolved without an interpretation of contracts governed by ERISA. Plaintiff contends that the court need only interpret the terms of the settlement agreement to resolve his claims. However, as defendant points out, the terms of the settlement agreement incorporate the health and disability plans. Specifically, the agreement states that except for provisions reducing or denying benefits normally covered by worker's compensation; "UPS and Yonker agree that all other provisions of the health insurance contract will remain in force and effect" and that "[a]ll other terms of the disability policy would remain in force and effect." Moreover, plaintiff's request for compensatory damages for defendant's alleged breach of the standard health and disability insurance policies will require the court to interpret the terms of those plans.

Because plaintiff's claim satisfies all three elements of the Jass test, I conclude that plaintiff's action is completely preempted by ERISA and is removable to federal court under 28 U.S.C. § 1441(b). Therefore, plaintiff's motion to remand this case to the Circuit Court for Oneida County will be denied.

ORDER

IT IS ORDERED that plaintiff William Yonker's motion to remand is DENIED.

Entered this 14th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge