15

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMPREHENSIVE NEUROSURGICAL, P.A., Plaintiff, v. BLUE CROSS BLUE SHIELD OF TEXAS, Defendant.	Civil No. 03-4020 Hon. Faith S. Hochberg, U.S.D.J. **OPINION & ORDER** Date: November 30, 2003

HOCHBERG, District Judge

This matter having come before the Court upon Defendant's motion to dismiss the Complaint and upon Plaintiff's cross-motion to remand the instant action to state court;[1]

and Defendant having removed the action, arguing that:

> the State Court action is a civil action of which the district courts of the United States have original jurisdiction by reason of the alleged claims and alleged rights arising under and/or involving an ERISA employee welfare health benefit plan. The State Court action is being removed by defendant BCBS to the district court of the United States for the district and division embracing the place where such action is pending. Accordingly, the State[] Court action is removable pursuant to 28 U.S.C. Sec. 1441(a) and (b).

(Notice of Removal at 2); and this being the only ground asserted, see 28 U.S.C. § 1446(a) (requiring defendant to give short and plain statement of removal grounds);

and Plaintiff in its cross-motion to remand arguing that the instant action should not have been removed to federal court because Plaintiff's claims do not fall within the scope of the ERISA

---

[1] Defendant moves to dismiss the Complaint on the ground that this court does not have personal jurisdiction over it because it does not have sufficient minimum contacts with New Jersey. However, because the Court finds that it does not have subject-matter jurisdiction over the instant action, it need not address Defendant's motion to dismiss.

Civil Enforcement Provisions, § 502(a) of the Act, because plaintiff is neither a participant nor a beneficiary as defined by either 29 U.S.C. § 1132(a)(1)(B) or 29 U.S.C. § 1002;

and the Court noting that 29 U.S.C. § 1132(a)(1)(B), states that an action may be brought by

> a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights 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.

29 U.S.C. § 1132(a)(1)(B); and "participant" being defined 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); and "beneficiary" being defined as:

> 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); and

the Court having examined the complaint; and it appearing that under the well-pleaded complaint rule, the possibility that federal-law issues may be involved in an action will not give rise to federal jurisdiction where a complaint asserts a cause of action only under state law, Fran. Tax Bd. v. Constr. Lab. Vac. Tr., 463 U.S. 1, 9-12 (1983);[2] and

the complete-preemption doctrine being an exception to the well-pleaded complaint rule, wherein:

---

[2] "Congress has given the lower federal courts jurisdiction to hear, originally or by removal from a state court, only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." Fran. Tax Bd., 463 U.S. at 27-28.

> the pre-emptive force of a [federal] statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule . . . . Once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law.

Caterpillar, Inc. v. Williams, 482 U.S. 386, 393 (1987) (quotes and citations omitted);

and a state claim being completely pre-empted by ERISA when (1) ERISA's enforcement provisions give rise to a federal cause of action vindicating the same interest that a plaintiff's state claim seeks to vindicate, and (2) there is congressional intent to permit removal despite a plaintiff's exclusive reliance on state law, Allstate Ins. Co. v. 65 Sec. Plan, 879 F.2d 90, 93 (3d Cir. 1989); and

it appearing, however, that an action is not completely preempted if a plaintiff is not an enumerated party under ERISA, e.g., neither a participant nor a beneficiary, because non-enumerated parties lack standing to sue, see 29 U.S.C. § 1132(a); and

it appearing that "[t]he requirement that the plaintiff be a plan participant [or beneficiary] is both a standing and subject matter jurisdictional requirement," Miller v. Rite Aid Corp., No. 02-2464, 2003 WL 21489422, at *4 (3d Cir. June 30, 2003) (quotes and citations omitted);

and the United States Court of Appeals for the Third Circuit having considered the argument that there is jurisdiction where a non-enumerated party is an assignee of a participant or beneficiary but found that while this argument "is appealing because of its simplicity, . . . we are unable to subscribe to it" because, inter alia, (1) "Congress simply made no provision in § 1132(a)(1)(B) for persons other than participants and beneficiaries to sue," (2) "the intentions of the parties and the district court regarding federal jurisdiction are irrelevant to the determination whether such jurisdiction exists," and (3) even if a plaintiff is an assignee, "we have serious doubts whether [a participant or beneficiary] could assign along with [his or] her substantive rights [the] right to sue in

federal court," N.E. Dep't ILGWU Health & Welfare Fund v. Teamsters Loc. Union No. 229 Welfare Fund, 764 F.2d 147, 154 n.6 (3d Cir. 1985), accord Allstate, 879 F.2d at 93-94;

and the Court noting that § 1132(a) must be read "narrowly and literally," N.E. Dep't, 764 F.2d at 153; and

it appearing that Comprehensive Neurological, as a health-care provider, lacks standing to bring an ERISA action because it is (1) neither a participant nor beneficiary as a defined by ERISA, and (2) arguably a mere assignee of Blue Cross Blue Shield subscriber's rights, and thus the Court is precluded from exercising jurisdiction, Inst. of Pa. Hosp. v. Blue Cross & Blue Shield, No. 96-3041, 1996 WL 729847, at *3-4 (E.D. Pa. Dec. 10, 1996) (remanding action sua sponte for lack of subject matter jurisdiction), Allergy Diagnostics Lab. v. The Eq., 785 F. Supp. 523, 526-27 (W.D. Pa. Dec. 17, 1991) (same), Solomon v. Geraci, No. 89-8607, 1989 WL 156372, at *1 (E.D. Pa. Dec. 19, 1989) (same), see McCall v. Metro. Life Ins. Co., 956 F. Supp. 1172, 1184 n.8 (D.N.J. 1996) (noting health-care provider may not bring action under ERISA, even as assignee), Rallis v. Trans World Music Corp., No. 93-6100, 1994 WL 527 53, at *3 (E.D. Pa. Feb. 22, 1994) (denying hospital's motion to intervene), Health Scan v. Travelers Ins. Co., 725 F. Supp. 268, 269-70 (E.D. Pa. 1989) (granting motion to dismiss for plaintiff's lack of standing), Cameron Manor v. United Mine Workers, 575 F. Supp. 1243, 1245 (W.D. Pa. 1983) (same);[3]

[3] The Court notes that other district courts have held that a health-care provider, as an assignee, has standing under ERISA, see, e.g., Charter Fairmount Inst. v. Atla Health Strategies, 835 F. Supp. 233, 235-39 (E.D. Pa. 1993), Inst. of Pa. Hosp. v. Travelers Ins. Co., 825 F. Supp. 727, 730-31 (E.D. Pa. 1993). The Court, however, declines to follow those cases because they appear to contradict N.E. Dep't ILGWU Health & Welfare Fund. In any event, in those cases, the plaintiffs alleged that they were assignees of participants or beneficiaries but in the instant case, neither the complaint nor the notice of removal allege that Comprehensive was the assignee of Blue Cross Blue Shield's subscriber.

and it thus appearing that the action should be remanded;[4]

and good cause having been shown,

IT IS on this 30th day of November, 2003, hereby

ORDERED that Plaintiff's motion to remand is **GRANTED**; and it is further

ORDERED that Defendant's motion to dismiss is **DENIED** as moot;

and it is further

ORDERED that this case is **CLOSED**.

Hon. Faith S. Hochberg, U.S.D.J.

[4] Plaintiff also argues that the case should be remanded to state court because its claim does not "relate to" an ERISA plan under § 514 of the Act. The Court need not address this claim as it has already found grounds sufficient to remand the case the state court, i.e., even if this Court were to determine that Plaintiff's claim related to an ERISA plan, the action would nonetheless be remanded as Plaintiff is not a participant or beneficiary.