United States District Court
Southern District of Texas
ENTERED
February 09, 2021
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN JUANOPULOS, Plaintiff,	§	CIVIL ACTION NO. 4:20-cv-01394
vs.	§	JUDGE CHARLES ESKRIDGE
SALUS CLAIMS MANAGEMENT LLC, *et al*, Defendants.	§	

MEMORANDUM AND OPINION ON REMAND

The motion by Plaintiff John Juanopulos to remand this action to state court is granted. Dkt 16.

1. Background

Juanopulos owns J&A Paint and Body Shop. He alleges that he is the sole proprietor and its only employee. He purchased an occupational injury benefit plan for his business through Defendant Life Insurance Company of North America (LINA). Dkt 1-3 at ¶ 8. The plan in relevant part provided "certain medical benefits for Covered Employees who sustain an occupational injury." Dkt 22-1 at 3.

Juanopulos alleges that he kept a gun at his office to provide on-premises security. He inadvertently shot himself in the stomach while at work when attempting to remove a stuck bullet. He filed a claim with LINA for medical and disability benefits under his plan. Dkt 1-3 at ¶¶ 9–10.

Defendant Salus Claims Management LLC is a third-party administrator responsible for managing work-related injury benefit claims. Defendant Matt Reiter is a Salus employee. He denied the claim, asserting that using or cleaning a gun wasn't

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within the covered scope of employment. Id at ¶ 11. Juanopulos appealed in writing to explain that he carried a gun "for my protection and my employee's protection." Id at ¶ 12 (screenshot of appeal letter). Salus denied the appeal. Id at ¶ 13.

Juanopulos filed suit against LINA, Salus, and Reiter in Texas state court, alleging violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act, along with claims for fraud, breach of contract, and breach of the duty of good faith and fair dealing. See generally Dkt 1-3. Salus and Reiter timely removed on assertion that all claims are preempted as exclusively governed by the Employee Retirement Income Security Act of 1974. Dkt 1 at 3–4. Juanopulos moved to remand, arguing that his plan isn't governed by ERISA. Dkt 16.

2. Legal Standard

A defendant may typically remove any action from state court where "original jurisdiction" also exists in federal court. 28 USC § 1441(a). But a district court must remand the case to state court if "at any time before final judgment it appears that the district court lacks subject matter jurisdiction." 28 USC § 1447(c).

The removal statute is strictly construed in favor of remand. *Manguno v Prudential Property & Casualty Insurance*, 276 F3d 720, 723 (5th Cir 2002). The removing party bears the burden of showing not only that federal jurisdiction exists, but also that removal was proper. Ibid, citing *De Aguilar v Boeing Co*, 47 F3d 1404, 1408 (5th Cir 1995). This is no easy lift. A presumption exists against subject-matter jurisdiction, which "must be rebutted by the party bringing an action to federal court." *Coury v Prot*, 85 F3d 244, 248 (5th Cir 1996) (citation omitted). The Fifth Circuit holds that any "doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction." *Acuna v Brown & Root, Inc*, 200 F3d 335, 339 (5th Cir 2000). A respected treatise on federal jurisdiction counsels that "issues of fact raised by a motion to remand are for the court alone to decide, with the removing party carrying the burden of proof." Charles Alan Wright and Arthur R. Miller, *Federal Practice & Procedure* § 43 (West 2d ed April 2019 update).

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The existence of federal subject-matter jurisdiction is determined at the time of removal. See *In re Bissonnet Investments LLC*, 320 F3d 520, 525 (5th Cir 2003), citing *Arnold v Garlock*, 278 F3d 426 434 (5th Cir 2002). This includes consideration of "the claims in the state court petition as they existed at the time of removal." *Manguno*, 276 F3d at 723 (citation omitted). Juanopulos here filed an amended complaint after removal. Dkt 17. This was timely as of right under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure. Even so, only the original complaint will be considered for purposes of remand.

Actions presenting claims arising under federal law are plainly removable. See 28 USC § 1331; see also *Gutierrez v Flores*, 543 F3d 248, 215 (5th Cir 2008). Whether a particular case arises under federal law turns on the *well-pleaded complaint* rule. *PCI Transportation, Inc v Fort Worth & Western Railroad Co*, 418 F3d 535, 543 (5th Cir 2005). By this, federal jurisdiction exists "only when a federal question is presented on the face of plaintiff's properly pleaded complaint." Ibid (citations omitted). No federal question appears on the face of the complaint here, as Juanopulos asserts what appear to be only violations of the Texas Insurance Code and related state-law torts and remedies. Dkt 1-3 at 7–13.

But there is an exception to the well-pleaded complaint rule. A state-law cause of action can be removed where a federal statute wholly displaces the claim through complete preemption. *Beneficial National Bank v Anderson*, 539 US 1, 8 (2003). One such statute is ERISA, codified at 29 USC § 1001 *et seq*. See *Aetna Health Inc v Davila*, 542 US 200, 208 (2004); *McAteer v Silverleaf Resorts, Inc*, 514 F3d 411, 416–17 (5th Cir 2008). Its expansive preemption provisions are "intended to ensure that employee benefit plan regulation would be exclusively a federal concern." *Aetna Health*, 542 US at 208 (citation omitted). Cases presenting claims governed by ERISA are thus removable to federal court for the very reason that state-law claims are preempted. *Cantrell v Briggs & Veselka Co*, 728 F3d 444, 448 (5th Cir 2013).

3. Analysis

The parties dispute whether ERISA applies to this case. More particularly, they dispute whether the at-issue occupational injury benefit plan is subject to ERISA. If it is, then ERISA may

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preempt the asserted causes of action. If it's not, there's no preemption—meaning that subject-matter jurisdiction is lacking, and the case must be remanded.

ERISA was enacted by Congress in relevant part to protect "the interests of participants in employee benefit plans and their beneficiaries." 29 USC § 1001(b). It applies to "any employee benefit plan . . . established or maintained" by (among others) "any employer engaged in commerce." See 29 USC § 1003(a) (coverage). Such plan can be either "an employee welfare benefit plan" or an "employee pension benefit plan" (or both). 29 USC § 1002(3) (definition of *employee benefit plan*). The plan at issue here is, if anything, an employee welfare benefit plan. See 29 USC § 1002(1) (definition of *employee welfare benefit plan*); see also Dkt 22-1.

Some other definitions are necessary. An *employee* is defined in somewhat circular fashion as "any individual employed by an employer." See 29 USC § 1002(6). More important here, a *participant* is defined as any employee or former employee "who is or may become eligible to receive a benefit" from an employee benefit plan as defined above, or "whose beneficiaries may be eligible to receive any such benefit." 29 USC § 1002(7). And 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 USC § 1002(8). Properly understood, all participants in ERISA plans are employees, but not all employees must be participants. For example, see *Habets v Waste Management*, 363 F3d 378, 386 (5th Cir 2004); *Nugent v Jesuit High School*, 625 F2d 1285, 1288 (5th Cir 1980) (citations omitted).

The Fifth Circuit has set out three distinct inquiries that courts must resolve to determine whether a particular plan qualifies as an employee welfare benefit plan under ERISA. These are:

- *First,* whether the plan exists;
- *Second,* whether it falls within the safe-harbor provision established by the Department of Labor, which pertains to 29 CFR § 2510.3-1(j); and
- *Third,* whether it satisfies the primary elements of an ERISA "'employee benefit plan'—establishment or

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> maintenance by an employer intending to benefit employees."

Meredith v Time Insurance Co, 980 F2d 352, 355 (5th Cir 1993). The particular plan isn't governed by ERISA if any of these inquiries is answered in the negative. Ibid.

The parties purport to dispute only the last inquiry—whether the subject plan was established or maintained to benefit employees. But their dispute in this regard is in part factual, concerning whether the subject plan covers more than just Juanopulos as an owner—or more precisely, whether it also covers an employee besides him. The Fifth Circuit in *House v American United Life Insurance Company* made clear that a dispute of that nature is better characterized as one pertaining to the first inquiry—whether a plan governed by ERISA even exists. 499 F3d 443, 450 (5th Cir 2007).

However approached here—first inquiry or third—the answer to each is negative. And so this particular plan isn't governed by ERISA.

Generally, with respect to the first inquiry, an ERISA plan "is established if from the surrounding circumstances a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits." *Donovan v Dillingham*, 688 F2d 1367, 1373 (11th Cir 1982, *en banc*); see also *Memorial Hospital System v Northbrook Life Insurance Co*, 904 F2d 236, 240–41 (5th Cir 1990) (adopting *Donovan*); *Meredith*, 980 F2d at 355. And an employee welfare benefit plan—being the type of employee benefit plan at issue—"requires (1) a 'plan, fund, or program' (2) established or maintained (3) by an employer or by an employee organization, or by both, (4) for the purpose of providing medical, surgical, hospital care, sickness, accident, disability, death, unemployment or vacation benefits, apprenticeship or other training programs, day care centers, scholarship funds, prepaid legal services or severance benefits (5) to participants or their beneficiaries." *Donovan*, 688 F2d at 1371, citing 29 USC § 1002(1). It is that last aspect that is mainly disputed here.

The Department of Labor has determined by regulation that "the term 'employee benefit plan' shall not include any plan, fund

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