UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDITH MILLER, M.A., LMFCT, Plaintiff, vs. PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY; PROVIDENT COMPANIES, INC.; UNUMPRVIDENT CORPORATION; and DOES 1 to 10, Defendants.	CASE NO.: CV 99-9464 ABC (RNBx) ORDER RE: DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION RE: ESTABLISHMENT OF ERISA PLAN

On August 7, 2000, the Court took the motion for summary adjudication filed by Defendants Provident Life and Accident Insurance Company ("Provident") and Unumprovident Corporation, as Successor to Defendant Provident Companies, Inc., ("Motion") under submission without oral argument. After reviewing the materials submitted by the parties and the case file, the Court GRANTS the Motion.

I. Background

This action concerns the denial of benefits under a disability insurance policy. On August 5, 1999, Plaintiff Judith Miller filed a complaint in Riverside County Superior Court against Defendants (Case No. 331253), alleging three causes of action: (1) breach of contract;

(2) breach of the implied covenant of good faith and fair dealing; and (3) declaratory relief. On September 17, 1999, Defendants removed the case to this Court. Defendants asserted both diversity of citizenship and federal question as the basis for this Court's exercise of jurisdiction. Defendants maintained that the Employee Retirement Income Security Act of 1974 ("ERISA") completely preempts Plaintiff's state causes of action. On September 24, 1999, Defendants filed their answer.

On June 5, 2000, Defendants filed the Motion. Defendants argue that Plaintiff's first and second causes of action for breach of contract and bad faith denial of benefits are preempted by ERISA. Because Defendants contend that ERISA governs, Defendants request that the Court strike Plaintiff's prayer for extra-contractual relief and jury trial demand. On June 12, 2000, Plaintiff filed her opposition. Defendants filed their reply on June 19, 2000.[1]

II. Factual Background

The facts relevant to the Motion are not really in dispute. Rather, it is the legal consequence of those facts that is in dispute.

Richard B. Miller, M.D., Inc. ("RBM") was incorporated on April 1, 1980. (UF No. 1.)[2] Soon thereafter, Dr. Miller, Plaintiff's

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[1] On June 16, 2000, Defendants filed a second motion for summary adjudication entitled "Motion for Summary Adjudication of Issues." On June 23, 2000, the Court took that motion off calendar pending its determination of the Motion. Because the Court's ruling herein moots the second motion, the Court DENIES Defendants' June 16, 2000 motion for summary adjudication as MOOT.

[2] Citations to "UF" shall refer to Defendants' Statement of Uncontroverted Facts.

husband,[3] was elected President of RBM and Plaintiff was elected Secretary of RBM. (R. Miller Decl., ¶ 2.) At the time, Dr. Miller was RBM's sole shareholder. (Id.) Some time after RBM's inception, Dr. Miller began hiring employees. (UF No. 1.) In 1984, RBM hired Plaintiff as a marriage and family counselor. (UF No. 2.) At all relevant times, RBM generally had two staff employees working in the office. (Brito Decl., Ex. 2 [R. Miller Depo.] at 22.) On December 31, 1984, Plaintiff became a shareholder of RBM. (R. Miller Decl., ¶ 3.) Thereafter, through RBM's dissolution, Plaintiff and her husband remained the only shareholders of the corporation. (See id. at ¶ 5.)

On April 9, 1980, RBM established the Miller M.D., Inc. Profit Sharing Plan and Trust, which provided funds to employees upon retirement (the "Pension Plan"). (UF No. 2.)[4] The Pension Plan was self-administered by RBM. (UF No. 4.)[5] Later, RBM also began to provide medical insurance for its employees. (UF No. 5.) In July 1984, RBM began to provide life insurance for its employees. (Id.) RBM paid the premiums and took tax deductions on its purchase of these policies. (UF No. 5.)

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[3] Plaintiff and Dr. Miller have been married since September 5, 1957. (R. Miller Decl. ¶ 1.)

[4] The Pension Plan was subsequently amended and restated effective April 1, 1984. (UF No. 2.)

[5] The table of contents for the document entitled "[RBM] PROFIT SHARING PLAN SUMMARY PLAN DESCRIPTION" shows that the profit sharing plan is an ERISA benefit plan. (Brito Decl., Ex. 4 at 45 ["IX STATEMENT OF ERISA RIGHTS"].) Unfortunately, Defendants did not submit a complete copy of the Summary Plan Description; the excerpts attached as Exhibit 4 omitted the pages that refer to ERISA rights.

In 1984, RBM also began to purchase disability benefits for employees. (See UF No. 6.) On July 1, 1984, Provident issued Plaintiff an individual disability insurance policy (No. 6-334-610808). (Id.) This policy was replaced by policy no. 6-335-717943 effective July 14, 1986, the policy at issue in this action ("Policy"). (UF No. 6.) Until April 1993, Plaintiff's policy premiums were paid by RBM. (See UF Nos. 6, 7; J. Miller Decl., ¶ 2.)

Provident offered group discounts on employer-sponsored disability plans. (UF No. 7.) Employers received a 10 to 12 percent premium discount on policies covering employees in the risk group. (Id.) In turn, the employers must agree to pay in full the required premiums for all such policies. (See id.) RBM enrolled in that program by executing a salary allotment agreement. (Id.) The initial risk group for RBM included only Dr. Miller and Plaintiff. (UF No. 8.) Effective December 1 1989, the risk group was reformed to include two other RBM employees, Amy DeRouen and Mary Berkeley. (UF No. 8; Hershey Decl., Ex. 2 at 14-16.) On December 8, 1989, Amy DeRouen withdrew from the risk group. (Leviton Decl., Ex. J; see R. Miller Decl., ¶ 4.) On June 1, 1992, Mary Berkeley withdrew from the risk group. (Leviton Decl., Ex. K; see R. Miller Decl., ¶ 5.) Thereafter, only Plaintiff and Dr. Miller were covered by Provident disability policies. (Cf. R. Miller Decl. ¶ 5.)

Following the departure of Ms. Berkeley, RBM employed no non-shareholder employees. (Id.) In late 1992, Plaintiff experienced a heart attack. (See Smith Decl., Ex. 1 at 3-4 [Insured's Statement of Claim].) On April 4, 1993, Plaintiff began to pay the premiums for the Policy. (J. Miller Decl., ¶ 2.) On March 25, 1994, Plaintiff submitted a disability claim to Provident. (UF No. 9; Smith Decl.,

Ex. 1 at 3-4.) Provident paid the claim for four years until it concluded that Plaintiff was no longer qualified for benefits. (UF No. 9; Smith Decl., Ex. 1 at 6 [October 19, 1998 letter].)

RBM dissolved on January 31, 1995. (R. Miller Decl., ¶ 5; Brito Decl., Ex. 1 at 7.) RBM's Pension Plan was terminated as of January 31, 1997. (R. Miller Decl., ¶ 6 & Ex. E.) On August 25, 1997, final distributions from the profit sharing plan were made to Mary Berkeley and Amy DeRouen. (R. Miller Decl., ¶ 7 & Ex. G.) On October 19, 1998, Defendants terminated Plaintiff's benefits. (Smith Decl., Ex. 1 at 6 [October 19, 1998 letter].) Effective February 1, 1999, the Policy was canceled. (Leviton Decl., Ex. L.)

III. Discussion[6]

A. ERISA Plan

ERISA governs employee benefit plans. 29 U.S.C. § 1001 et seq. An "employee benefit plan" is defined as "an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." 29 U.S.C. § 1002(3). At issue is whether the Policy was part of an ERISA plan and, if so, whether it should remain characterized as a part of an ERISA plan for this lawsuit even though certain events have occurred, namely, the termination of all non-owner employees in 1993, the dissolution of the corporation in 1995 and the dissolution of the Pension Plan in 1997. If the Policy was and is part of an ERISA plan, then Plaintiffs's state law claims would be preempted by ERISA. See

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[6] The party moving for summary judgment has the burden of establishing that there is "no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); British Airways Bd. v. Boeing Co., 585 F.2d 946, 951 (9th Cir. 1978).

Greany v. Western Farm Bureau Life Ins. Co., 973 F.2d 812, 817-18 (9th Cir. 1992) ("'ERISA contains one of the broadest preemption clauses ever enacted by Congress[;] . . . The ERISA provisions 'supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan'"); Harper v. American Chambers Life Ins. Co., 898 F.2d 1432, 1433 (9th Cir. 1988).

1. The Policy Was Part Of An ERISA Plan

Plaintiff first argues that the Policy was never part of an ERISA plan. Plaintiff concedes that the Pension Plan was an ERISA employee "pension benefit plan," i.e., one that provides retirement income to employees. (Opp. at 11 (citing 29 U.S.C. § 1002(2).) However, Plaintiff contends that (1) the Policy was in no way related to the Pension Plan and (2) the Policy was never a part of a "welfare benefit plan" within the meaning of ERISA. (Opp. at 11-12.)

"'The existence of an ERISA plan is a question of fact, to be answered in light of all the surrounding facts and circumstances from the point of view of a reasonable person.'" Harper, 898 F.2d at 1433. An ERISA welfare benefit plan is defined as:

> any plan, fund, or program which is heretofore or is hereafter established or maintained by an employer . . . to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment . . . .

29 U.S.C. § 1002(1). Here, RBM provided life insurance to its employees "through the pension plan." (Brito Decl., Ex. 2 [R. Miller

Depo.] at 16.) RBM also provided medical and disability insurance to Plaintiff, Dr. Miller, and the office employees. (Id., [R. Miller Depo.] at 10-14.) Although it is unclear when an ERISA welfare benefit plan commenced,[7] it is clear that RBM had established an ERISA welfare benefit plan at least by December 1989, when RBM reformed its Provident disability insurance risk group to include Ms. Berkeley and Ms. DeRouen. Ms. Berkeley remained covered by the RBM-paid disability insurance policy until June 1, 1992. Based on the undisputed facts, the Court concludes that the Policy was, at least by December 1989, "one component of [RBM's] employee benefit program and that the program, taken as a whole, constitutes an ERISA plan." Peterson v. American Life & Health Ins. Co., 48 F.3d 404, 407-08 (9th Cir. 1995) (recognizing that Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 264 (9th Cir. 1991) implicitly concluded that coverage of even one non-owner employee is sufficient to bring a policy within ERISA).

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2. The Policy Remains Part Of An ERISA Plan

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[7] For example, the records submitted by the parties do not show when the life insurance was added to the Pension Plan and when medical insurance was first provided to RBM's employees other than Plaintiff and Dr. Miller. The regulations implementing Title I of ERISA provide that a plan "under which no employees are participants" does not constitute an ERISA employee benefit plan. 29 C.F.R. § 2510.3-3(b); see Peterson, 48 F.3d at 407. "An individual and his or her spouse shall not be deemed to be employees" of any business "wholly owned by the individual or by the individual and his or her spouse." 29 C.F.R. § 2510.3.3(c)(1). Therefore, until the date employees other than Plaintiff and Dr. Miller participated in RBM's medical insurance and/or life insurance program, no ERISA plan was formed. The record suggests that this date occurred long before 1989, when RBM added Mary Berkeley and Amy DeRouen to its Provident disability insurance risk group. According to Dr. Miller, office staff members who appear to pre-date Ms. Berkeley and Ms. DeRouen -- Linda Gibson, Maria Aguilar -- were all provided medical insurance benefits. (See Brito, Ex. 2 [R. Miller Depo. at 13-14, 22-23].)

Plaintiff argues that at all "relevant" times, the Policy was not part of an ERISA plan. (Opp. at 8-9, 10.) Plaintiff contends that any ERISA plan that might have previously existed terminated by the time this lawsuit was commenced. Plaintiff points to the fact that a benefit plan without non-owner (or non-spouse) employees does not fall within the scope of ERISA. (Opp. at 11 (citing 19 U.S.C. § 1002(1).) Thus, Plaintiff argues that the Policy was no longer governed by ERISA as of June 1, 1992, when RBM's last non-owner employee withdrew from the disability insurance risk group. (Id.) Alternatively, Plaintiff contends that the Policy stopped being part of any ERISA plan by one of the following dates: January 31, 1995, when RBM dissolved; January 1997, when the Pension Plan was dissolved; or August 1997, when final distributions from the Pension Plan were made. (See Opp. at 8-9.) In response, Defendants argue that under Ninth Circuit law, the Policy continues to fall within the scope of ERISA even after the events identified by Plaintiff. (Reply at 5-6.)[8] The Court agrees.

Employee benefit plans which are "heretofore or . . . hereafter established or maintained by an employer" are governed by ERISA. 29 U.S.C. § 1002(1) & (2)(A) (emphasis added). The statutory definition's use of the word "or" supports the Court's interpretation that an insurance policy that was part of an established ERISA plan is governed by ERISA even if the plan is no longer maintained as an ERISA

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plan by the employer. Ninth Circuit case law also supports this interpretation.

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[8] No authority squarely addresses the factual scenario presented here.

In Tingey v. Pixley-Richards West, Inc., 953 F.2d 1124 (9th Cir. 1992), the court held that ERISA preempts a claim concerning the right to convert group health coverage under an ERISA plan into an individual policy after the employee was fired by the employer. Id. at 1132-33. A short while later, the Ninth Circuit extended the holding of Tingey. In Greany, 973 F.3d at 817, the court held that a dispute over the payment of benefits under an individual conversion policy is governed by ERISA. As the court explained:

> Because the [employee] would not be eligible for a conversion policy without first belonging to the class of beneficiaries covered by the ERISA group plan, we conclude that the individual conversion benefits are part of the ERISA plan and are thus governed by ERISA. Had the [employee] not received health benefits pursuant to the ERISA group plan, [he] would not have been eligible to receive conversion benefits, and would have no cause of action arising from the conversion policy.

Id. at 817.

The Ninth Circuit's analysis in Peterson, 48 F.3d 404, also supports the Court's conclusion. Peterson involved an insurance policy issued to a partner of a partnership. 48 F.3d at 406. At all relevant times, the partnership provided health insurance for three persons only: the plaintiff, his partner and one employee. Id. At the time the plaintiff submitted his claim for benefits, he was the only person covered under the policy in question; the other two individuals were covered by a different insurer. Id. The Ninth Circuit held that the plaintiff's insurance policy was part of an ERISA plan. Id. at 407-08. In support of its holding, the court

reasoned:

> At all times relevant to this action, [the partnership] continued to provide insurance to at least one non-partner employee, albeit not under the [same] policy. . . . [¶] Moreover, the . . . policy originally covered a non-partner employee in addition to Peterson and his partner. A policy is governed by ERISA if it is "*established* or maintained by an employer . . . for the purpose of providing [medical insurance] for its participants or their beneficiaries." 29 U.S.C. § 1002(1) (emphasis added). That the . . . policy is governed by ERISA finds further support in our cases addressing "conversion" policies . . . .

Id. (original emphasis).

Based on the foregoing authority, the Court concludes that the Policy is governed by ERISA, even though Plaintiff's claim for benefits arose after RBM had stopped employing non-owner employees and the denial of benefits occurred long after the company had dissolved and its ERISA plan terminated. The Court recognizes that the result of this holding may seem harsh to Plaintiff. Following ERISA's broad statutory language and Ninth Circuit case law favoring ERISA preemption, the Court can reach no other conclusion.

3. Standing To Assert ERISA Claim

Plaintiff contends that her claims are governed by state law because she had no standing to pursue her claims sunder ERISA at the time she filed the complaint in August 1999. (Opp. at 9.) First, Plaintiff argues that Plaintiff cannot standing as a plan "participant" because she was a shareholder of RBM at all times she was covered under the Policy. (Id.) Second, because the Policy was

canceled months before she filed this action, Plaintiff argues that Defendants cannot show that Plaintiff was a beneficiary of any benefit as of August 1999. (Id.)

"A civil action under ERISA may be brought by 'a participant or beneficiary.'" Peterson, 48 F.3d at 408 (quoting 29 U.S.C. § 1132(a)(1)). A participant is "'any employee or former employee of an employer.'" Id. (quoting 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.'" Id. (quoting 29 U.S.C. § 1002(8)).

Plaintiff correctly states that she cannot bring ERISA claims as a "participant" because she was not an "employee" within the meaning of ERISA. See 29 C.F.R. § 2510.3-3(c)(1); see also Harper, 898 F.2d at 1434 (because partners or spouses of partners are not "employees" under ERISA, the plaintiffs do not qualify as ERISA participants). But Plaintiff erroneously contends that she lacks standing as an ERISA beneficiary. The Ninth Circuit has broadly construed the term "beneficiary" for standing purposes. In Peterson, the court held that "any person designated to receive benefits from a policy that is part of an ERISA plan may bring a civil suit [as an ERISA beneficiary] to enforce ERISA." 48 F.3d at 409. Here, the undisputed facts show that Plaintiff has a colorable claim for vested benefits under a disability policy covered by ERISA. Plaintiff, therefore, has standing to bring a civil suit under ERISA.

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B. ERISA Preempts Plaintiff's State Law Claims and Remedies

ERISA preempts state law claims if they "relate to" an ERISA

employee benefit plan. 29 U.S.C. § 1144(a). Defendants argue that state common law contract and tort causes of action such as the ones asserted by Plaintiff are preempted by ERISA. (Motion at 17.) Plaintiff appears to concede that if the Policy is part of an ERISA plan, her breach of contract and bad faith causes of action would be preempted; Plaintiff's opposition does not address Defendants' "relate to" argument. The Court holds that Plaintiff's breach of contract and bad faith causes of action are preempted by ERISA. Accordingly, these claims are dismissed with prejudice.

Defendants also argue that Plaintiff is barred from seeking extra-contractual and punitive damages under ERISA. (Motion at 18.) Because Defendants are correct, see Johnson v. Dist. 2 Marine Eng. Beneficial Ass'n, 857 F.2d 514, 518 (9th Cir. 1988), the Court strikes Plaintiff's requests for extra-contractual compensatory and punitive damages.

Finally, Defendants argue that the Court should strike Plaintiff's request for a jury trial. (Motion at 19.) Because ERISA actions provide no right to a jury trial, the Court strikes Plaintiff's demand for a jury trial. See Neville v. Shell Oil Co., 835 F.2d 209, 213 (9th Cir. 1987).

IV. Conclusion

For the foregoing reasons, the Court hereby ORDERS that Defendants' Motion is GRANTED: (1) Plaintiff's breach of contract and bad faith causes of action are hereby DISMISSED with prejudice; (2) Plaintiff's request for extra-contractual relief is STRICKEN; and (3) Plaintiff's jury trial demand is STRICKEN. The Court GRANTS, sua sponte, Plaintiff leave to file an amended complaint that properly asserts claims for relief under ERISA.

SO ORDERED.

DATED: _____

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AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE