IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD T. SANTASANIA, Plaintiff, v. UNION TROWEL TRADES BENEFIT FUNDS OF CENTRAL PA, et al., Defendants.	CIVIL ACTION NO. 3:01-CV-1442 (JUDGE CAPUTO)

MEMORANDUM

Before the Court is a motion for summary judgment (Doc. 27) by Defendants Union Trowel Trades Benefit Funds of Central Pennsylvania ("Union Trowel"), the Union Trowel Trades Benefit Fund of Central Pennsylvania, d/b/a/ Union Trowel Trades Benefit Fund of Central Pennsylvania Health and Welfare Plan ("Union Trowel Fund"), the Board of Trustees of the Union Trowel Trades Benefit Fund of Central Pennsylvania ("Trustees"), and D.H. Evans Associates, Inc. ("D.H. Evans").

Plaintiff Richard T. Santasania commenced this action on July 30, 2001. (Doc. 1.) In relevant part, Plaintiff's complaint stated that the Union Trowel Fund, through which Plaintiff had received health care benefits, improperly terminated his health care coverage effective September 1, 2000, forcing him to pay monthly premiums to keep his health care pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). Plaintiff also claimed that Defendants improperly refused to pay medical bills incurred as a result of an auto accident in which Plaintiff was involved on August 17, 2000. In addition, Plaintiff claimed entitlement to pre-judgment interest and attorney

fees.[1]

In seeking reimbursement for his COBRA payments, Plaintiff seeks relief that is not available under ERISA. Accordingly, I will enter judgment in Defendants' favor with respect to this claim. Because an application for attorney fees under ERISA should be brought only after entry of judgment, the claim contained in Plaintiff's complaint is premature. Accordingly, I will dismiss this claim without prejudice. Finally, Plaintiff's claim for payment of medical bills and pre-judgment interest have become moot. As all claims in this matter have been resolved or become moot, I will order this case closed.

BACKGROUND

Prior to June 1, 2000, Plaintiff was a participant in a health care plan administered by the International Union of Bricklayers and Allied Craftworkers Local Union No. 5 ("Local 5 Fund"). During the Spring of 2000, the Local 5 Fund was on the verge of insolvency. Therefore, effective June 1, 2000, the Local 5 Fund merged into another fund – the Union Trowel Fund – which is a Defendant in this action.

The Union Trowel Fund is administered by the Defendant Trustees. The Trustees have delegated day-to-day administration of the Union Trowel Fund to Defendant D.H. Evans.

Plaintiff was injured August 17, 2000 in an auto accident. (Doc. 1 at ¶ 9.) Plaintiff submitted medical bills to the Union Trowel Fund. The Union Trowel Fund initially denied coverage, and Plaintiff had to pay his medical bills out-of-pocket. (Doc. 1 at ¶¶ 11-13.) Then, by letter dated October 4, 2000, D.H. Evans (the day-to-day administrator of the

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[1] I dismissed certain other claims not relevant to this discussion in my memorandum and order dated February 25, 2002. (Doc. 15.)

Union Trowel Fund) terminated Plaintiff's health care coverage. (Doc. 1 at ¶ 14). Plaintiff elected coverage under COBRA in order to maintain his health care benefits. (Doc. 1 at ¶¶ 14-16.) Electing COBRA coverage meant that Plaintiff had to pay monthly premiums.

In a letter dated October 16, 2000, Plaintiff appealed both D.H. Evans' refusal to pay Plaintiff's medical bills and the termination of Plaintiff's health care coverage. At its December 2000 meeting, the Union Trowel Fund's Trustees sustained Plaintiff's appeal with respect to the medical bills. As for the termination of Plaintiff's health care benefits, the Trustees remanded the decision for further consideration. On September 13, 2001, D.H. Evans notified Plaintiff that it had reaffirmed its initial decision that Plaintiff was ineligible for health care benefits. (Doc. 6, Ex. G.) Plaintiff had already commenced this action.

DISCUSSION

A. <u>Claims That Are Now Moot.</u>

1. <u>Payment of Plaintiff's Medical Bills.</u>

Defendants state that on September 13, 2001, the Union Trowel Fund paid "all benefit claims that it had in its possession arising out of Plaintiff's August 17, 2000 automobile accident." (Doc. 28 at 16.) Plaintiff agrees. (Doc. 35 at 3.) Moreover, Defendants continue to pay Plaintiff's medical bills as they are submitted. (Doc. 28 at 16-17.) Plaintiff does not dispute this. (Doc. 35.) Defendants have submitted proof of payment. (Doc. 30, Ex. H, J.) Therefore, the claims stated in subpoint (a) of Counts I-IV are moot.

2. Pre-Judgment Interest.

Defendants also state that on October 3, 2001, they sent a letter to Plaintiff's counsel asking for Plaintiff's calculation of the amount due to Plaintiff for pre-judgment interest. (Doc. 28 at 17; Doc. 30, Ex. K.) Defendants further state that Plaintiff's counsel never supplied Defendants with such a calculation, and therefore Defendants tendered a payment based on their own calculation of Plaintiff's pre-judgment interest. (Doc. 30, Ex. L.) Plaintiff does not dispute Defendants' calculation or the adequacy of this sum as satisfaction of Plaintiff's pre-judgment interest claim. Count VII of Plaintiff's complaint is moot.

B. The Remaining Claims.

1. Plaintiff's COBRA Claim.

The Union Trowel Fund terminated Plaintiff's health care coverage effective September 1, 2000. (Doc. 1, ¶ 14) As a result, Plaintiff paid a monthly premium to maintain COBRA coverage. (Doc. 1, ¶ 1, 16.) Plaintiff argues that the termination of health care coverage was not justified and seeks reimbursement from Defendants for these monthly payments. I need not reach the issue of whether Defendants were legally justified in terminating Plaintiff's health care coverage because Plaintiff lacks a statutory basis on which to seek reimbursement.

Plaintiff fails to specify the section of ERISA authorizing a civil action for reimbursement for COBRA payments. However, the Court has made its own examination of the relevant case law and concluded that the statutory provisions under which litigants most commonly seek to bring such claims are ERISA § 502(a)(1)(B) and §

502(a)(3).[2] In the final analysis, however, I conclude that neither provision of the statute authorizes Plaintiff to bring an action seeking reimbursement for COBRA payments.

Section 502(a)(1)(B) permits a plan participant to bring a civil action "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." *Id.* Section 502(a)(3), which is essentially a "catch-all" remedial provision, authorizes a civil action by a participant "to obtain other appropriate equitable relief (i) to redress such violations [of the terms of the plan] or (ii) to enforce any provisions of . . . the terms of the plan." *Id.*

Section 502(a)(1)(B) does not authorize Plaintiff's claim for reimbursement of COBRA expenses. Courts have strictly construed the language in § 502(a)(1)(B), limiting recovery to benefits due *under the terms of the plan. See Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 144 (1985) (holding that § 502(a)(1)(B) does not allow for the recovery of extracontractual damages and may only support a claim for contractually authorized benefits). *Harsch v. Eisenberg*, 956 F.2d 651, 654-56 (7th Cir. 1992) further clarified this principle, holding that financial expenses and losses incurred as a result of an improper denial of benefits are regarded as extracontractual. *See also Medina v. Anthem Life Ins. Co.*, 983 F.2d 29 (5th Cir. 1993); *Reinking v. Philadelphia American Life Insur. Co.*, 910 F.2d 1210 (4th Cir. 1990); *McRae v. Seafarers' Pension Plan*, 920 F.2d 819, 821 n. 7 (11th Cir. 1991). I find nothing in the record suggesting that the governing documents of the Union Trowel Fund vest participants with a right to collect for expenses incurred *as a consequence* of a denial of benefits. The relief sought by Plaintiff with

[2] 29 U.S.C. § 1132(a)(1)(B) and § 1132(a)(3), respectively.

respect to his COBRA claim is therefore extracontractual and not available under § 502(a)(1)(2).

For a different reason, § 502(a)(3) does not support Plaintiff's claim for reimbursement of COBRA payments. Section 502(a)(3) vests plan participants with a right to bring action only for "equitable relief" to redress violations of the terms of the plan. *Id.* The Supreme Court addressed the distinction between equitable relief and legal relief last term in *Great West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002). In *Knudson*, the Court held that relief under § 502(a)(3) is available only in cases that follow the historical model for cases brought at equity, explaining:

> almost invariably . . . suits seeking . . . to compel the defendant to pay a sum of money to the plaintiff are suits for "money damages," . . . since they seek no more than compensation for loss resulting from the defendant's breach of legal duty.

Id. at 210. The *Knudson* Court distinguished between those equitable claims which seek to prevent future losses, which are permissible under ERISA, and those which seek past due sums, which are not. *Id.* at 210-11. *See also Wal-Mart Stores, Inc. Associates' Health and Welfare Plan v. Wells*, 213 F.3d 398, 401 (7th Cir. 2000) ("[a] claim for money due and owing under a contract is quintessentially an action at law") (internal quotation omitted). Lower courts have applied *Knudson* to hold that a beneficiary's claim for insurance money she claimed she would have received if not for fiduciary's breach of duty was a claim for legal relief, which *Knudson* forecloses. *Kishter v. Principal Life Ins. Co.*, 186 F. Supp. 2d 438, 445 (S.D.N.Y. 2002).

To be clear, I do not read *Knudson* as completely foreclosing the possibility that a transfer of money may be ordered in the context of an action in equity maintainable under

§ 502(a)(3). *Knudson* expressly left open the possibility that an action for "equitable restitution" might be sustained under § 502(a)(3) "where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession." *Id.* at 213. However, neither Plaintiff's complaint nor his brief in opposition to the instant motion (Doc. 35) indicate that Plaintiff is requesting "equitable restitution." Moreover, Plaintiff does not allege that the money paid for COBRA payments is traceable to particular funds in the Defendants' possession. Given this, I find that Plaintiff has not stated a claim for relief on an equitable restitution theory. As this is the only theory on which a claim such as Plaintiff's could potentially proceed under 502(a)(3), I will grant judgment in favor of Defendants concerning Plaintiff's claim for reimbursement of monthly COBRA payments.

2. Attorney Fees.

Although ERISA § 502(g)(1)[3] permits the recovery of attorney fees at the Court's discretion, a request for attorney fees is not itself a cause of action under ERISA. *Cerasoli v. Xomed, Inc.*, 972 F. Supp. 175, 183 (W.D.N.Y. 1997); *Gerzog v. London Fog Corp.*, 907 F. Supp. 590, 603 (E.D.N.Y. 1995); *see also Hechenberger v. Western Elec. Co., Inc.*, 742 F.2d 453, 455 n.5 (8th Cir. 1984). Such a request is properly made pursuant to § 502(g)(1) after entry of judgment. The Court will therefore dismiss, *sua sponte* and without prejudice, the portions of Plaintiff's complaint requesting attorney fees.

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[3] 29 U.S.C. § 1132(g)(1).

CONCLUSION

To summarize, after my February 25, 2002 memorandum and order, four of Plaintiff's claims remained active. Since that time, two of these claims – the claim for payment of Plaintiff's medical bills arising from Plaintiff's August 17, 2000 auto accident and the claim for pre-judgment interest – have become moot. I will grant judgment in favor of Defendants on the claim for reimbursement of COBRA payments, as Plaintiff seeks a remedy that is not available under ERISA. Finally, I will dismiss Plaintiff's claim for attorney fees without prejudice. As no other claims remain to be resolved, this case will be closed.

An appropriate order will follow.

________________________ ________________________

Date

A. Richard Caputo
United States District Judge

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RICHARD T. SANTASANIA,

Plaintiff,

v.

UNION TROWEL TRADES BENEFIT FUNDS OF CENTRAL PA,

Defendant.

CIVIL ACTION NO. 3:01-CV-1442

(JUDGE CAPUTO)

ORDER

NOW, this _____ day of February 2003, **IT IS HEREBY ORDERED** that:

1) Plaintiff's claim for payment of medical bills arising from Plaintiff's August 17, 2000 auto accident is dismissed as moot.

2) Plaintiff's claim for pre-judgment interest is dismissed as moot.

3) Defendant's motion for summary judgment as to Plaintiff's claim for reimbursement of monthly COBRA payments (Doc. 27) is **GRANTED**.

4) Plaintiff's claim for attorney fees pursuant to ERISA § 502(g)(1) is dismissed without prejudice.

5) The Clerk of Court shall mark this case closed.

A. Richard Caputo
United States District Judge

FILED: 2/4/03