

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|-------------------------|---|---------------------|
| IVETTE MARTELL, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| U.S. HEALTHCARE, | : | |
| | : | |
| Defendant. | : | NO. 97-6626 |

MEMORANDUM-ORDER

AND NOW, this 23rd day of April, 1998, upon consideration of the motion by defendant U.S. Healthcare (“USH”) to dismiss the complaint of plaintiff Ivette Martell (“Martell”) (Document No. 3), and the answer of plaintiff thereto (Document No. 6), having found and concluded that:

1. The following facts are from the complaint and the paragraphs of the motion to dismiss by USH that were admitted by plaintiff. Martell filed a complaint against USH in the Court of Common Pleas of Bucks County on September 4, 1997. Upon service of the complaint, USH filed a Notice of Removal pursuant to 28 U.S.C. § 1441(b) and (c).

Martell’s claims are based on a contract between her employer, Waste Management, Inc., and USH to provide the employees of Waste Management, Inc. a plan of health and welfare benefits. Martell was a USH member through her employment at Waste Management, Inc. Martell alleges that USH is liable for payment of medical bills which she submitted to them, but which USH refused to pay. The damages alleged by Martell include unpaid medical expenses, incidental expenses, interest, costs, and attorney fees.

There is an express provision in the contract between USH and Waste Management, Inc. whereby a beneficiary is required to exhaust the comprehensive grievance procedure established by USH prior to instituting litigation arising from the services of USH;

2. USH presents three arguments in its motion to dismiss: (1) Martell’s claims are preempted by Employee Retirement Income Security Act of 1974 (“ERISA”) because they seek damages for an alleged denial of benefits and they “relate to” Martell’s employee health and welfare benefit plan; (2) Martell cannot state a claim under ERISA because she failed to plead that she exhausted the

mandatory grievance procedure before filing suit; and (3) the damages Martell seeks are not available under the exclusive civil enforcement provisions of ERISA;

3. ERISA provides an exclusive civil enforcement mechanism for resolution of claims for the recovery of benefits due under an employee welfare benefit plan. See Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41 (1987); Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58, 62-63 (1987). ERISA provides that: “[a] civil action may be brought (1) by a participant or beneficiary (B) 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.” 29 U.S.C. § 1132(a)(1)(B). In § 1144(a), the statute provides that: “[e]xcept as provided in subsection (b) of this section [which is not applicable to this case], the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . .” Thus, if a plaintiff alleges state law causes of action that “relate to” an employee benefit plan, they fall within § 1144(a) and are preempted. See Pilot Life Insurance, 481 U.S. at 47 (holding that plaintiff’s common law claims in tort and contract “related to” an employee benefit plan and were preempted by ERISA);

4. This Court concludes that Martell’s claims are for recovery of benefits and that these claims “relate to” the employee benefit plan. Thus, the allegations in the complaint are preempted by ERISA and as such do not state a cause of action as a matter of law;

5. Even if the allegations of Martell’s complaint were construed to be claims under ERISA, Martell failed to allege that she exhausted the grievance procedure of USH before suing USH, although she admits that her membership in USH was pursuant to an express provision whereby she was required to exhaust the comprehensive grievance procedure established by USH prior to instituting litigation. See Pl.’s Answer to Def.’s Motion to Dismiss ¶ 17; Weldon v. Kraft, Inc., 896 F.2d 793, 800 (3d Cir. 1990); Kimble v. International Brotherhood of Teamsters, 826 F. Supp. 945, 947 (E.D. Pa. 1993). Thus, Martell’s complaint fails to state a claim as a matter of law even under ERISA;¹

it is accordingly hereby **ORDERED** that the motion is **GRANTED** and the complaint is **DISMISSED**.

¹ Because I conclude that the complaint fails to state a claim under ERISA and any other claim for recovery of benefits under the plan is preempted by ERISA, the Court need not address the final argument of USH that the damages Martell seeks are not available under ERISA.

LOWELL A. REED, JR., J.