IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Angela Kelley, Plaintiff, vs. Oconee Medical Center, Individually and as agent for Sun Life Assurance Company of Canada, and Sun Life Assurance Company of Canada, Defendants.	)	Civil Action No. 8:13-2564-TMC **ORDER**

This matter is before the court on the plaintiff's motion to remand (ECF No. 10) and Sun Life Assurance Company of Canada's ("Sun Life") motion for ERISA preemption (ECF No. 18). The dispositive issue at the heart of both motions is whether the relevant insurance policy falls under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq*. For the reasons that follow, the court believes that it does.

Facts

The plaintiff, Angela Kelley ("Kelley"), purchased a Sun Life supplemental life insurance policy for her husband through her employer, Oconee Medical Center ("OMC"). After Kelley submitted her application, OMC began deducting the premiums from her paycheck and the supplemental life insurance appeared on a subsequently issued Benefits at a Glance statement. OMC continued to deduct the premiums for almost a year, until Kelley's husband died and she filed a claim. Sun Life denied her claim, asserting that her husband was not covered. Kelley turned down OMC's offer to refund her premiums and brought an action in state court to recover the $20,000.00 benefit. The defendants promptly removed the action to

federal court, asserting that the supplemental life insurance is part of the group insurance plan OMC purchased for the benefit of its employees and, therefore, Kelley's action to recover benefits is governed by ERISA. Kelley contends that her case falls within ERISA's safe harbor provision and, thus, should proceed in state court.

Legal Framework

The district courts have original jurisdiction over cases governed by ERISA and claims brought in state court concerning qualifying employee benefit plans are removable to federal court. 29 U.S.C. § 1001, *et seq*; *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987). ERISA defines a qualifying employee benefit plan as "any plan, fund or program established or maintained by an employer . . . for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise . . . benefits in the event of sickness, accident, disability, [or] death." 29 U.S.C. § 1002(1).

The Secretary of Labor has issued regulations further clarifying this definition, including a regulation establishing a safe harbor from ERISA preemption. *See* 29 C.F.R. § 2510.3-1(a)(1). Pursuant to the safe harbor provision, ERISA does not preempt a group-type insurance program offered by an insurer to employees, under which:

> (1) No contributions are made by an employer or employee organization;
>
> (2) Participation [in] the program is completely voluntary for employees or members;
>
> (3) The sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and
>
> (4) The employer or employee organization receives no consideration in the form of cash or otherwise in connection with

> the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

29 C.F.R. § 2510.3-1(j). For a plan to fall under this provision, it must meet all four of these conditions. *See Hansen v. Continental Ins. Co.*, 940 F.2d 971 (5th Cir. 1991); *Vazquez v. Paul Revere Life Ins. Co.*, 289 F. Supp. 2d 727 (E.D. Va. 2001); *Lott v. Met. Life Ins. Co.*, 849 F. Supp. 1451 (M.D. Ala. 1993).

If a plan does not fall under this safe harbor provision, then ERISA's broad preemption clause applies and ERISA's provisions "supersede any and all state laws insofar as they . . . relate to" the plan. *See* 29 U.S.C. § 1144(a). A law "relates to an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96-97 (1983).

Analysis

The defendants concede that the plan meets the second and fourth safe harbor requirements, but assert that OMC contributed to and endorsed the plan, thus contradicting the first and third requirements and bringing the plan under ERISA. Because the court agrees that Oconee endorsed the plan, it does not reach the contribution issue.

For the plan to remain within the safe harbor provision, an employer "can only assume a very limited role with respect to the plan." *Casselman v. Am. Family Life Assur. Co.*, 143 F. App'x 507, 509 (4th Cir. 2005). In fact, courts have so strictly interpreted the third safe harbor requirement to find that employers must not stray from the functions the provision explicitly authorizes – allowing the insurer to publicize the program, collecting premiums, and remitting premiums to the insurer. *See, e.g., Butero v. Royal Maccabees Life Ins. Co.*, 174 F.3d 1207, 1213 (11th Cir. 1999) ("The regulation explicitly obliges the employer who seeks its safe harbor

to refrain from *any* functions other than permitting the insurer to publicize the program and collecting premiums"); *Hansen v. Continental Ins. Co.*, 940 F.2d 971, 977 (5th Cir. 1991) (finding that a plan did not meet the third requirement because the employer's involvement was not limited *solely* to permitting the insurer to publicize the program to its employees, collecting premiums, and remitting them to the insurer), *abrogated on other grounds*, *Koehler v. Aetna Health, Inc.*, 683 F.3d 182, 189 (5th Cir. 2012); *Hall v. Standard Ins. Co.*, 381 F. Supp. 2d 526, 529 (W.D. Va. 2005).

Here, OMC's involvement with the plan was not so restricted. According to the Summary Plan Description ("SPD"), OMC is the plan sponsor, plan administrator, and agent for service of process.[1] At least one court has found that just the act of assuming the role of plan administrator removes the plan from the safe harbor. *Ballard v. Leone*, Civil Action No. MJG-11-779, 2012 WL 665987, at *5 (D. Md. Feb. 28, 2012) (unreported) ("If [the employer] did actually assume the role of 'plan administrator,' the Policy would almost certainly fall outside the safe harbor exception because 'a plan administrator or a trustee of a plan must, by the very nature of his position, have 'discretionary authority or discretionary responsibility in the administration' of the plan . . . [and h]olding discretionary authority or discretionary responsibility in the administration of the plan would be an 'additional function' that would trigger ERISA."); *see also Thompson v. Am. Home Assur. Co.*, 95 F.3d 429, 436 (6th Cir. 1996) ("where the employer is named as the plan administrator, a finding of endorsement may be appropriate.").

In addition, the defendants have provided affidavits and other exhibits showing that OMC made the decision to obtain coverage from Sun Life; negotiated and decided key terms of the

[1] The SPD also states that the plan was established to provide welfare benefits for OMC employees and explains certain ERISA rights and requirements.

plan, including the types of coverage offered, amounts of coverage, and eligibility requirements; actively marketed the plan to its employees through employee benefits guides embossed with its name and logo; and assisted employees with selecting coverage and filing claims. These too are activities outside the limited scope of the safe harbor provision. *See Casselman*, 143 Fed. App'x at 509-510 (finding that an employer endorsed a plan where it chose the insurance company and decided on key terms, including employee eligibility); *Custer v. Pan Am. Life Ins. Co.*, 12 F.3d 410, 417 (4th Cir. 1993) (finding ERISA governed plan where employer determined the benefits and negotiated terms); *Hansen*, 940 F.2d at 977 (finding endorsement where employer distributed a booklet with its own name on it encouraging employees to consider the plan and employed a full-time benefits administrator, who accepted claims forms and submitted them to the insurer).

Kelley has not provided evidence to contradict the defendants' position, but asserts that the court should follow the Western District of Kentucky's reasoning in *Tinsley v. Conn. Gen. Life Ins. Co.*, 744 F. Supp. 2d 637 (W.D. Ky. 2010). In *Tinsley*, the court considered five questions in evaluating whether an employer endorsed a plan: (1) Has the employer played an active role in wither determining which employees will be eligible for coverage or in negotiating the terms of the policy or the benefits thereunder; (2) Is the employer named as the plan administrator; (3) Has the employer provided a plan description that specifically refers to ERISA or that the plan is governed by ERISA; (4) Has the employer provided materials to its employees suggesting that it has endorsed the plan; and (5) Does the employer participate in processing claims. *Id.* at 641. There, the court found that four of the factors favored the plaintiff and one

was inconclusive. *Id.* at 644. Here, however, as discussed above, even following this framework, every factor favors the defendants.[2]

Thus, the group insurance program under which Kelley purchased the supplemental life insurance policy is an ERISA plan, making ERISA "the exclusive vehicle" by which she may assert her claim. *See Singh v. Prudential Health Care Plan, Inc.*, 335 F.3d 278, 291 (4th Cir. 2003).

Conclusion

Therefore, after thoroughly reviewing the record in this case, the court DENIES Kelley's motion to remand (ECF No. 10) and GRANTS Sun Life's motion for ERISA preemption (ECF No. 18). The court does not dismiss claims preempted by ERISA, but rather, treats them as federal claims under 29 U.S.C. § 1132. *Darcangelo v. Verizon Commc'ns, Inc.*, 292 F.3d 181, 195 (4th Cir. 2002). Thus, the case remains in this court and will be subject to a standard ERISA case management order.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

May 6, 2014
Anderson, South Carolina

[2] In addition, *Tinsley* was not decided in this circuit and, thus, is not controlling authority.