

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
_____ DIVISION

C/A No.:

)	
)	ERISA
Plaintiff,)	SPECIALIZED CASE MANAGEMENT
)	AND SCHEDULING ORDER
vs.)	(29 U.S.C. §1001 <i>et seq.</i>)
Defendant.)	
_____)	

This case appears to request entitlement to benefits pursuant to the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* In light of the claim for relief as set forth in the complaint (or the grounds for removal in Defendant’s Notice of Removal or the defenses in Defendant’s Answer), the Court orders as follows:

1. Within fifteen (15) days from the date of this order, Plaintiff is required to respond to the attached Specialized Interrogatories. Defendant is required to respond to the same interrogatories within thirty (30) days after receiving Plaintiff’s Responses. The responses to the interrogatories are to be served on opposing counsel and are not to be filed with the court.

2. If the parties agree that all of the claims in the case are preempted by ERISA, then within fifteen (15) days after Defendant serves its Responses to the attached Specialized Interrogatories, the parties are required to confer and to discuss the issues raised by the attached Joint Stipulation Instructions for ERISA Cases. The parties are required to notify the court in writing of the date scheduled for the Joint Stipulation conference and to file a fully executed Joint Stipulation within fifteen (15) days after the parties’ conference.

3. In the event Plaintiff or Defendant contends that some or all of the claims in the case

are not preempted by ERISA, the party asserting ERISA preemption shall file, within fifteen (15) days after Defendant serves its Responses to the attached Specialized ERISA Interrogatories, a written motion and memorandum setting forth the grounds and legal basis on which the party asserts the claims are preempted by ERISA. The form of the memorandum and the time and manner for filing any response or reply memoranda shall be governed by the provisions of Local Rule 7.00. If the Court finds that some or all of the claims are preempted by ERISA, then within fifteen (15) days after such ruling, the parties are required to complete the Joint Stipulation conference outlined in Paragraph 3 above. If the court finds that some but not all of the claims are preempted by ERISA, then the parties are to propose in the Joint Stipulation how the court should proceed with any non-ERISA claims.

4. Within twenty (20) days of the filing of the Joint Stipulation, the parties are required to submit memoranda in support of judgment with respect to all benefits claims governed by ERISA. Each party shall have five (5) days thereafter to file an optional reply. These memoranda should follow the form of Local Rule 7.05. All references in memoranda shall be to the consecutively-numbered page of the attachments to the Joint Stipulation. In its discretion, the court may order a hearing. Unless so ordered, the court will decide the ERISA benefit issues upon the record before it without a hearing. Motions for summary judgment need not be filed. Any party objecting to the court disposing of the case on the Joint Stipulation must file an objection within fifteen (15) days of the date of this Order.

The procedures set forth in this order are intended to supersede and replace the requirements generally applicable under Rules 26(a), (d), and (f) of the Federal Rules of Civil Procedure. This order supersedes any earlier entered scheduling order.

IT IS SO ORDERED.

THE HONORABLE R. BRYAN HARWELL
UNITED STATES DISTRICT JUDGE

Date: _____
Florence, S.C.

SPECIALIZED INTERROGATORIES TO BE ANSWERED BY THE PARTIES

1. **PREEMPTION ISSUES:** ERISA provides for preemption of state law claims which relate to an ERISA plan.¹ Therefore, if the plaintiff asserts any state law claims, each party should state whether it contends any of plaintiff's state law claims survive ERISA preemption. If any party contends any state law claims survive preemption, that party should set forth the factual and legal basis for this position and provide a list of any claims beyond those provided by 29 U.S.C. § 1132 which the party believes survive preemption, including claims asserted under other federal laws.

2. **PERMISSIVE AMENDMENT OF PLEADING:** It is this court's general policy to allow liberal amendment of the complaint to assert ERISA claims if the court finds the originally asserted claims to be preempted by ERISA. If the plaintiff asserts state law claims which are or may be preempted, each party should state its position regarding amendment of the complaint.²

3. **STANDARD OF REVIEW:** As a general rule, this court will conduct a *de novo* review of a benefits denial decision unless the controlling plan documents grant the plan or claims administrator discretion to interpret or apply the plan's terms. An abuse of discretion standard is applied if appropriate language is included in the relevant plan documents. In the latter case, the court will also consider whether the person or entity which made the benefits denial decision had a conflict of interest.³

4. **NON-JURY TRIAL:** Although the courts are not in complete agreement, the clear majority

¹ See e.g. 29 U.S.C. § 1002(1)-(8)(key definitions); 29 U.S.C. § 1003 (scope of coverage); 29 U.S.C. § 1144 (preemption provisions); 29 U.S.C. § 1132 (remedial provisions); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990) (preempting state common law for wrongful termination when plaintiff-employee alleges termination to avoid payment of pension benefits); *Pilot Life Ins. Co. v. Dedeaux*, 48 U.S. 41 (1987) (preempting state law claims for breach of contract and bad faith refusal to pay benefits under an insured employee benefits plan); *Makar v. Health Care Corp. of Mid-Atlantic*, 872 F. 2d 80, 82 (4th Cir. 1989) ("After *Pilot Life*, . . . any contention that the same claims here are not preempted by ERISA would be frivolous.").

² Plaintiff should list the claims which it would anticipate asserting under ERISA and a date by which an amended complaint will be submitted. Defendant should provide any support it may have for opposing amendment at this stage.

³ See *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989) (rejecting the "arbitrary and capricious" standard of review which was previously applied in most, if not all, circuits); see also *infra notes 6* (citing Fourth Circuit cases applying the two standards of review).

view, which is followed by this court, is that ERISA cases are to be tried non-jury.⁴

5. EXHAUSTION OF PLAN REMEDIES: The Court follows the general rule that a litigant must exhaust plan remedies before seeking judicial review of a plan's decision to deny benefits.⁵

6. SCOPE OF ADMISSIBLE EVIDENCE: The scope of admissible evidence is dependent to a large degree on two factors: (1) what evidence was presented to the plan during the internal review process; and two(2) the applicable standard of review. See 3 and 5 above. In particular, there is a preference for limiting the plaintiff to evidence presented to the plan administrator during the internal review process.⁶

7. DAMAGES: This court accepts the majority view that punitive damages are not available under ERISA.

8. OTHER ISSUES: If the parties are aware of other procedural issues which should be addressed at this stage, they may raise them in response to this order (e.g., whether the proper entities have been joined).

⁴ See *Biggers v. Wittek Indus. Inc.*, 4 F.3d 291, 293, 298 (4th Cir. 1993) (remanding for trial *by court* case in which state law claims were preempted by ERISA); *Berry v. CIBA-Geigy Corp.* 761 F.2d 1003, 1006-07 (4th Cir. 1985) (pre-*Firestone* case holding that ERISA cases are tried non-jury), *but see Vaughn v. Owen Steel Corp.*, 871 F. Suppl. 247 (D.S.C. 1994) (allowing jury trial in at least some ERISA cases). See generally *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989) (not directly addressing the jury trial issue but noting that ERISA cases are guided by principles of trust law and making numerous references to the role of the court in ERISA cases, without suggestion of any jury role).

⁵ See *Hickory v. Digital Equip. Co.*, 43 F. 3d 941, 945 (4th Cir. 1995) (affirming order requiring exhaustion of plan remedies absent a "clear and positive" showing of futility); *Maker v. Health Care Corp. of Mid-America*, 872 F. 2d 80, 82-83 (4th Cir. 1989) (dismissing case without prejudice because plaintiff had not exhausted available plan remedies).

⁶ See *Sheppard & Enoch Pratt Hosp., Inc. v. Travelers Ins. Co.*, 32 F. 3d 120, 124-25 (4th Cir. 1993) (when plan is granted discretion to make benefits decision, the trial court should normally refuse to consider evidence not presented to the plan); *Quesinberry v. Life Ins. Co. of N. Am.*, 987 F. 2d 1017, 1025-27 (4th Cir. 1993) (discussing differing standards of review and stating preference for review limited to evidence before the administrator, especially where the administrator who made the denial decision is vested with discretion).

**JOINT STIPULATION INSTRUCTIONS
FOR ERISA CASES**

1. Stipulate as to whether this matter involves only a claim for benefits pursuant to ERISA 29 U.S.C. § 1132(a)(1)(B) and a claim for attorney’s fees pursuant to 29 U.S.C. § 1132(g). If in disagreement, state each party’s position.
2. Stipulate whether administrative remedies provided by the plan have been fully exhausted. If in disagreement, state each party’s position.
3. Stipulate to the standard of review and state any language of the plan that confers discretionary authority upon Defendant. The parties should specifically address the effect of any conflict of interest. If in disagreement, state each party’s position and cite the language of the plan and case law that supports each position.
4. Stipulate to the contents of the administrative record and attach a copy of the relevant portions of the administrative record, consecutively numbered, as Exhibit 1. If in disagreement, attach the relevant portions of the record that are in dispute, consecutively numbered, and state each party’s position.
5. Stipulate to the governing plan document(s) and attach the relevant plan document(s), consecutively numbered, as Exhibit 2. If the parties disagree as to which plan document applies, attach the relevant documents and state each party’s position.
6. Stipulate to any plan provisions, exclusive of provisions that grant Defendant any discretionary authority or that outline the claims review procedure, which the court should consider in resolving this dispute. If in disagreement, state each party’s position.
7. Stipulate to the substantive issues that this court should resolve. If in disagreement, state each party’s position.
8. Stipulate, by signing below, that this court may dispose of this matter based upon this document, the attachments thereto, and the memoranda in support of judgment.

RESPONSES

WE SO AGREE AND STIPULATE:

Counsel for Plaintiff(s)

Counsel for Defendant(s)

Date: _____

Date: _____