

**Caremark Therapeutic Servs. v Medimpact  
Healthcare Sys., Inc.**

2008 NY Slip Op 30255(U)

January 28, 2008

Supreme Court, New York County

Docket Number: 0107367/2006

Judge: Barbara Kapnick

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BARBARA R. KAPNICK**

PART 12

Index Number : 107367/2006

**CAREMARK THERAPEUTIC SERVICES**  
 vs.  
**MEDIMPACT HEALTHCARE SYSTEMS**

SEQUENCE NUMBER : # 003

SUMMARY JUDGMENT

Justice

INDEX NO.

107367-06

MOTION DATE

MOTION SEQ. NO.

#003

MOTION CAL. NO.

Filed on this motion to/for

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**

JAN 30 2008

NEW YORK  
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated:

1/28/08

**BARBARA R. KAPNICK** J.S.C.  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate

DO NOT POST\*

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 12

-----X  
CAREMARK THERAPEUTIC SERVICES,

Plaintiff,

- against -

MEDIMPACT HEALTHCARE SYSTEMS, INC.,

Defendant.

-----X  
BARBARA R. KAPNICK, J.:

DECISION/ORDER  
Index No. 107367/06  
Motion Seq. No. 003

In this action, plaintiff Caremark Therapeutic Services seeks to recover payment for the treatment, services, supplies and equipment (i.e., prescription drugs) provided to three individuals, Ray Salomon (first cause of action), Margaret Nagle (second cause of action) and Aaron Fowler (third cause of action) in the amounts of \$66,731.50, \$6,237.77 and \$5,684.04, respectively.

Defendant MedImpact Healthcare Systems, Inc. ("MedImpact") was the Pharmacy Benefits Manager for the H.E. Butt Grocery Company Employee Benefits Plan, which covered the three employees/patients at issue.

The three individuals executed and delivered to the plaintiff an assignment of all claims as against their insurer under the relevant insurance policies, and plaintiff forwarded the invoices and assignments to defendant.

Defendant initially forwarded payments to plaintiff pursuant to those invoices,<sup>1</sup> but later, allegedly without giving a reason, recouped those payments by withholding said sums from payments owed to plaintiff for other patients.

Plaintiff moved (under motion sequence number 001) for summary judgment against the defendant on the first cause of action. Defendant opposed the motion on the grounds, inter alia, that the federal Employee Retirement Income Security Act ("ERISA") preempts plaintiff's claims.

Defendant now moves for summary judgment dismissing plaintiff's Complaint on the grounds that ERISA preempts plaintiff's claims since they "relate to" an employee benefit plan covered by the statute (ERISA § 514(a) [29 U.S.C. § 1144(a)]; see, Pilot Life Insur. Co. v. Dedeaux, 481 U.S. 41 [1987]).

Defendant further argues that "'ERISA permits suits to recover benefits only against the Plan as an entity'" (Lee v. Burkhart, 991 F.2d 1004, 1009 [2<sup>nd</sup> Cir. 1993]; ERISA § 502), and does not permit plaintiff to sue MedImpact, which is not the Plan Administrator or the sponsor of the plan, but merely the pharmacy benefits manager.

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<sup>1</sup> The bill of \$66,731.50 relating to Mr. Salomon was paid to the extent of \$55,331.50.

Plaintiff argues in opposition that there is no preemption because ERISA does not apply to this case, since the ERISA part of the transaction was completed (i.e., the basic claim was paid) before its tort claim for conversion or taking without any reason arose.

Plaintiff cites to Nealy v. US Healthcare HMO, 93 N.Y.2d 209 (1999), rearg. denied, 93 N.Y.2d 958 (1999), in which the Court of Appeals held that ERISA did not preempt claims for medical malpractice, breach of contract and breach of fiduciary duty against a primary care physician who allegedly delayed in submitting a specialist's referral form for approval by a health maintenance organization (HMO) governed by ERISA. The Court specifically found that

considering the objectives of the ERISA statute, it is clear that Congress did not intend to preempt claims such as those now before us. Plaintiff's claims do not bind an employee plan to any particular choice of benefits, do not dictate the administration of such a plan and do not interfere with a uniform administrative scheme. Indeed, plaintiff does not challenge any administrative determination relating to an employee benefit plan or the extent of rights and benefits under such a plan. In short, there is nothing about plaintiff's claims that "conflicts with the provisions of ERISA or operates to frustrate its [objectives]" (citation omitted). To the contrary, plaintiff's claims are consistent with ERISA's "principal object": the protection of plan participants and beneficiaries.

Nealy v. US Healthcare HMO, supra at 220-221.


Based on the papers submitted and the oral argument held on the record on November 14, 2007, this Court finds that the instant case, in contrast to the facts presented in Nealy v. US Healthcare HMO, supra, involves a claim for the payment of medical benefits under an employee benefit plan covered by ERISA. Plaintiff's claims thus relate directly to the administration of a covered plan and are, therefore, preempted by the statute.

Accordingly, defendant's motion for summary judgment is granted. The Clerk may enter judgment dismissing plaintiff's Complaint with prejudice and without costs or disbursements.

This constitutes the decision and order of the Court.

Dated: January 28, 2008

**FILED**  
JAN 30 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

  
BARBARA R. KAPNICK  
J.S.C.

**BARBARA R. KAPNICK**  
J.S.C.]