

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

DONNA J. SAGE,)	
)	
Plaintiff,)	Case No. 1:01CV00067
)	
v.)	OPINION AND ORDER
)	
NATIONAL BOOK WAREHOUSE, INC.,)	
)	By: James P. Jones
Defendant.)	United States District Judge
)	

*Amelia L. Bland, Bland & Associates, P.C., Marion, Virginia, for Plaintiff;
Robert J. Breimann, Street Law Firm, Grundy, Virginia, for Defendant.*

In this ERISA case, the defendant National Book Warehouse, Inc. (“NBW”) has filed a “Motion to Dismiss, or in the Alternative, for Summary Judgment,” pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56(b). For the reasons that follow, that motion will be granted in part and denied in part.

On May 3, 2001, the plaintiff filed suit in the Circuit Court of Smyth County, Virginia, against her former employer NBW for refusal to cover certain medical expenses incurred by the plaintiff after being diagnosed with dysphagia¹ and to pay her disability benefits due under certain employment disability plans.

¹ Dysphagia is a condition that causes difficulty swallowing. See 2 J.E. Schmidt, M.D., *Attorneys’ Dictionary of Medicine & Word Finder* D-243 (2000).

NBW removed the plaintiff's suit against it to this court pursuant to 28 U.S.C.A. § 1441(a) (West 1994), claiming that the plaintiff's cause of action under state law was preempted by Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §§ 1001-1144 (West 1999 & Supp. 2000) ("ERISA"). NBW then filed a motion to dismiss the plaintiff's claim under Federal Rule of Civil Procedure 12(b)(6) asserting that, because the plaintiff had raised only state law claims in her state action, she had failed to state a claim upon which relief could be granted.² (Mot. Dismiss ¶ 4.)

A pleading that sets forth a claim for relief shall contain "a short and plain statement of the grounds upon which the court's jurisdiction depends." Fed. R. Civ. P. 8(a). Although it is common to draft complaints with counts that advance a specific legal rule or theory, nothing in rule 8(a) requires it. "To the contrary, the rules discourage it." *Bartholet v. Reishauer A.G. (Zurich)*, 953 F.2d 1073, 1078 (7th Cir. 1992). The question is whether relief is possible under any set of facts that are consistent with the allegations. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

In the instant case, although the plaintiff's state pleading does not specifically assert that she seeks to recover under ERISA, she does allege that she had "group

² The plaintiff has asserted causes of action for breach of contract and bad faith refusal to pay her claims. (Mot. J. at 4.)

health care insurance coverage” (Mot. J. ¶ 4), that she “paid all applicable premiums” (Mot. J. ¶¶ 10-11), and that she incurred “significant medical expenses, all of which were reimbursable” under her plan with the company. (Mot. J. ¶ 17.) Because these allegations are adequate to invoke ERISA and notify NBW of the basis for the plaintiff’s claim, the pleading sufficiently sets forth a claim under ERISA to recover benefits due under an employee benefit plan, to enforce rights under the plan, or to clarify rights to future benefits under the plan. *See* 29 U.S.C.A. § 1132(a)(1)(B) (West 1999). This is made apparent by the fact that NBW specifically relies upon the relevant ERISA statute, 29 U.S.C.A. § 1144(a) (West 1999), as the basis for removal in this case. (Notice of Removal at 2.) Accordingly, I find that the requirements of rule 8(a) have been satisfied.

Likewise, although the plaintiff is unable to recover attorney’s fees under Virginia law due to the “unparalleled breadth” of ERISA’s preemption clause, *see Holland v. Burlington Indus., Inc.*, 772 F.2d 1140, 1147 (4th Cir. 1985), she is nevertheless able to pursue that claim under 29 U.S.C.A. § 1132(g)(1) (West 1999). Thus, her request for attorney’s fees will not be dismissed, though reference to Va. Code Ann. § 38.2-209 (Michie 1999) in her suit papers will be disregarded.

With respect to the plaintiff’s claim for punitive damages, the defendant correctly argues that those damages are preempted under ERISA. *See Powell v. Chesapeake &*

Potomac Tel. Co. of Va., 780 F.2d 419, 424 (4th Cir. 1985). Accordingly, I will grant the defendant's motion to dismiss the plaintiff's request for punitive damages.

For the aforementioned reasons, it is **ORDERED** that:

1. The defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment, (Doc. No. 3), will be granted with respect to the plaintiff's request for punitive damages; and
2. The motion will be denied on all other grounds.

ENTER: June 12, 2001

United States District Judge