

958 F.Supp. 592, 10 Fla. L. Weekly Fed. D 593  
(Cite as: 958 F.Supp. 592)

## C

United States District Court,  
S.D. Florida.

Margarita GARCIA, Plaintiff,

v.

AV-MED, INC. and J.C. Penny Company, Inc., De-  
fendants.

**No. 96-0431-Civ.**

Jan. 7, 1997.

Plan beneficiary brought action against carrier under Employee Retirement Income Security Act (ERISA). On carrier's motion to dismiss beneficiary's equitable estoppel claim, the District Court, [Hoeverler](#), Senior District Judge, held that beneficiary failed to allege that carrier interpreted ambiguous provision of plan to beneficiary's detriment, and thus failed to state federal common-law claim of estoppel.

Motion granted.

West Headnotes

**[1] Federal Civil Procedure 170A** 🔗1831

170A Federal Civil Procedure

170AXI Dismissal

170AXI(B) Involuntary Dismissal

170AXI(B)5 Proceedings

170Ak1827 Determination

170Ak1831 k. Fact Issues. [Most](#)

[Cited Cases](#)

In evaluation of sufficiency of claim, factual issues are to be resolved in favor of plaintiff, and prospect of recovery is irrelevant.

**[2] Federal Civil Procedure 170A** 🔗1721

170A Federal Civil Procedure

170AXI Dismissal

170AXI(B) Involuntary Dismissal

170AXI(B)1 In General

170Ak1721 k. In General. [Most Cited](#)

[Cases](#)

Motion to dismiss on basis of pleadings should rarely be granted.

**[3] Labor and Employment 231H** 🔗407

231H Labor and Employment

231HVII Pension and Benefit Plans

231HVII(A) In General

231Hk407 k. Preemption. [Most Cited](#)

[Cases](#)

(Formerly 296k130)

**States 360** 🔗18.51

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.45 Labor and Employment

360k18.51 k. Pensions and Benefits.

[Most Cited Cases](#)

State common-law claims relating to employee benefit plans, like equitable estoppel, are preempted by ERISA. Employee Retirement Income Security Act of 1974, § 514, 29 U.S.C.A. § 1144(a).

**[4] Federal Courts 170B** 🔗374

170B Federal Courts

170BVI State Laws as Rules of Decision

170BVI(A) In General

170Bk374 k. Matters of General Jurisprudence; Federal Common Law. [Most Cited Cases](#)

**Federal Courts 170B** 🔗419

170B Federal Courts

170BVI State Laws as Rules of Decision

170BVI(C) Application to Particular Matters

170Bk419 k. Insurance. [Most Cited Cases](#)  
(Formerly 296k22)

**Federal Courts 170B** 🔗421

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## 170B Federal Courts

### 170BVI State Laws as Rules of Decision

#### 170BVI(C) Application to Particular Matters

##### 170Bk421 k. Labor and Employment;

Workers' Compensation. [Most Cited Cases](#)

(Formerly 296k22)

Federal courts possess authority to create federal common law to govern issues in ERISA actions not governed by ERISA itself. Employee Retirement Income Security Act of 1974, § 2 et seq., [29 U.S.C.A. § 1001](#) et seq.

## [5] Labor and Employment 231H 555

### 231H Labor and Employment

#### 231HVII Pension and Benefit Plans

231HVII(G) Eligibility, Participation, and Coverage

##### 231Hk555 k. Estoppel of Plan to Deny

Eligibility or Coverage. [Most Cited Cases](#)

(Formerly 296k130)

Federal common-law claim of estoppel may be applied when employee relies, to his or her detriment, on interpretation of ambiguous provision in plan by representative of that plan. Employee Retirement Income Security Act of 1974, § 2 et seq., [29 U.S.C.A. § 1001](#) et seq.

## [6] Labor and Employment 231H 555

### 231H Labor and Employment

#### 231HVII Pension and Benefit Plans

231HVII(G) Eligibility, Participation, and Coverage

##### 231Hk555 k. Estoppel of Plan to Deny

Eligibility or Coverage. [Most Cited Cases](#)

(Formerly 296k130)

ERISA plan beneficiary failed to state federal common-law claim of estoppel against medical benefits carrier, where, although beneficiary alleged that carrier authorized medical services she received and made assurances that those services would be covered under plan, beneficiary failed to allege that carrier's representative interpreted ambiguous provision of plan to her detriment. Employee Retirement Income Security Act of 1974, § 2 et seq., [29](#)

[U.S.C.A. § 1001](#) et seq.

\*[592](#) Lawrence Joseph McGuinness, [Robert Twombly](#), Coral Gables, FL, for Plaintiff.

[Shari Lyn Pepper](#), Steven M. Zeigler, South Hollywood, FL, Elizabeth F. Wilson, McGlinchey, Stafford, Lang, New Orleans, LA, for Defendant Av-Med.

[Angel Castillo, Jr](#), Castillo, Schweiger & Stafford, Miami, FL, [Mary Gibbs Tacher](#), J.C. Penney Co, Inc., Plano, TX, for Defendant J.C. Penney Company.

### ***ORDER GRANTING DEFENDANT AV MED INC.'S MOTION TO DISMISS COUNT III OF PLAINTIFF'S SECOND AMENDED COMPLAINT***

[HOEVELER](#), Senior District Judge.

THIS CAUSE comes before the Court on Defendant AV-MED Inc.'s ("AV-MED") Motion\*[593](#) to Dismiss Count III of Plaintiffs Second Amended Complaint (D.E.# 23), filed September 6, 1996.

### **Background**

Plaintiff brings this action against Defendants for injunctive relief and damages pursuant to the Employee Retirement Income Security Act of 1974, [29 U.S.C. § 1002](#), et. seq. ("ERISA"). She alleges that medical procedures during her pregnancy were covered under AV-MED's ERISA benefit plan sponsored by J.C. Penny. Plaintiff's Second Amended Complaint includes three counts: (1) a claim against AV-MED for a violation of ERISA for non-payment of covered medical treatment; (2) a claim against J.C. Penny for a violation of COBRA § 10002(b); and (3) an estoppel claim against AV-MED.

Defendant AV-MED now moves to dismiss Plaintiff's estoppel claim. AV-MED first argues that under Florida law it is established that insur-

ance coverage cannot be created by estoppel. Plaintiff claims that because of ERISA preemption, state common law does not apply, and she may bring an estoppel claim under ERISA. However, AV-MED contends that a Plaintiff may only bring an estoppel claim under ERISA in cases of oral interpretations of an ambiguous plan. Because Plaintiff has not alleged that AV-MED made an oral interpretation of ambiguities in the plan, AV-MED argues that Plaintiff's estoppel claim must be dismissed.

### Motion to Dismiss Standard

[1][2] A defendant's motion to dismiss for failure to state a claim should be granted only when “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). All that the Federal Rules of Civil Procedure require is a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. *Id.* In evaluating the sufficiency of the claim, all facts stated in the complaint are accepted as true, *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232-33, 81 L.Ed.2d 59 (1984), factual issues are to be resolved in favor of the plaintiff, *Quinones v. Durkis*, 638 F.Supp. 856, 858 (S.D.Fla.1986), and the prospect of recovery is irrelevant. *In Re Asbestos Litigation*, 679 F.Supp. 1096, 1098 (S.D.Fla.1987). In light of these standards, a motion to dismiss on the basis of the pleadings should rarely be granted. *Madison v. Purdy*, 410 F.2d 99, 100 (5th Cir.1969) <sup>FN1</sup>. With these principles in mind, the Court will consider the arguments advanced by the Defendants seeking the dismissal of the Count III.

FN1. In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1,

1981.

Plaintiff contends that before she underwent medically necessary procedures for the birth of her first child on or about May 6, 1995, she obtained the authorization and consent of AV-MED. *Plaintiff's Second Amended Complaint* ¶¶ 27-31. She also claims that an AV-MED representative assured her that the Plan would pay all medical costs incurred. *Id.* Plaintiff further alleges that based upon AV-MED's representation that the Plan would pay for the medical bills, she relinquished the opportunity to utilize her spouse's then existing insurance policy. *Plaintiff's Second Amended Complaint* ¶ 33. Plaintiff thus asserts that AV-MED should be estopped from refusing to pay her medical costs.

### Equitable Estoppel

[3][4][5] State common law claims relating to employee benefit plans, like equitable estoppel, are preempted by ERISA. *See* 29 U.S.C. § 1144(a); *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). In *Nachwalter v. Christie*, 805 F.2d 956, 960 (11th Cir.1986), the Eleventh Circuit, noting that state common law claims such as promissory estoppel are preempted, held that there was no federal common law right to promissory estoppel under ERISA in cases involving oral amendments to or modifications of clear terms of employee benefit plans governed by ERISA, because ERISA specifically addresses these issues. Federal courts do, however, possess \*594 the authority to create federal common law “to govern issues in ERISA actions not governed by the act itself.” *Kane v. Aetna Life Insurance*, 893 F.2d 1283, 1285 (11th Cir.1990) (citing *Pilot Life*, 481 U.S. at 54, 107 S.Ct. at 1557). In *Kane*, the court held that a federal common law claim of equitable estoppel may lie when: “(a) the provisions of the plan at issue are ambiguous such that reasonable persons could disagree as to their meaning or effect, and (b) representations are made to the employee involving an oral interpretation of the plan.” *Alday v. Container Corporation of America*, 906

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F.2d 660, 666 (11th Cir.1990) (citing *Kane*, 893 F.2d at 1285-86). Thus, a “federal common law claim of estoppel may be applied when an employee relies, to his detriment, on an interpretation of an ambiguous provision in a plan by a representative of that plan.” *National Companies Health Benefit Plan v. St. Joseph's Hospital of Atlanta, Inc.*, 929 F.2d 1558, 1572 (11th Cir.1991) (citing *Kane*, 893 F.2d at 1286).

[6] In the instant case Plaintiff alleges that Defendant AV-MED authorized the medical services she received and made assurances that these services would be covered under the plan. However, Plaintiff does not allege that an AV-MED representative *interpreted* an *ambiguous* provision of the J.C. Penny employee benefit plan to her detriment. Plaintiff could not properly assert estoppel by contending that a representative of AV-MED made an oral modification or amendment to the plan. *See Nachwalter* at 960. Plaintiff must allege that AV-MED is estopped from denying coverage based upon an interpretation of an ambiguous plan provision. Plaintiff has failed to make such an explicit assertion. *See Jacobs v. Blue Cross and Blue Shield of Iowa*, 835 F.Supp. 1378, 1380-81 (M.D.Fla.1993).

### Conclusion

Based on the above, it is hereby,

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Count III of Plaintiff's Amended Complaint is GRANTED. **Plaintiff is granted leave to file an amended complaint within twenty (20) days.**

S.D.Fla.,1997.

Garcia v. AV-MED, Inc.

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