

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

BAUHAUS USA, INC.

PLAINTIFF

V.

CIVIL ACTION NO: 1:02CV180-JAD

BILL BENSON, ET AL

DEFENDANTS

MEMORANDUM OPINION

Plaintiff Bauhaus USA, Inc., has filed a motion for summary judgment in this cause, and the defendants have elected to not file responses. Plaintiff's motion for summary judgment is ripe for decision.

This is a suit under the Employment Retirement Income Security Act of 1974, as amended, seeking to enforce the reimbursement terms of an employee welfare benefit plan. 29 U.S.C. § 1132 (a)(3). The funds at issue are held by Defendant Bancorp South in an account established for Reshan Holmes by Defendant Bill Benson, Chancery Court Clerk of Lee County, Mississippi.¹

FACTS

The Bauhaus Group Employee Benefit Plan (the Plan), is self-funded and covered by ERISA. Reshan Holmes, a covered person in the Plan, was injured in an automobile accident on June 1, 1996. Medical expenses in the amount of \$46,229.45 were paid on behalf of Reshan Holmes by the Plan. Reshan Holmes, a minor, by and through Lillie Regina Holmes Copeland filed suit against James P. Davis and James A. Newman, d/b/a Newman Trucking for negligence

¹ Actually, there are two accounts. Account #60474491 in the amount of \$84,311.28 and account #53434577 in the amount of \$45,485.52. It would appear from the amounts in question that account #53434577 is the subject of this lawsuit.

in the automobile accident of June 1, 1996. This claim was settled for \$750,000. The Plan contains a provision for reimbursement and subrogation for any recovery against third parties.

The Plan states in relevant part:

The Covered Person will reimburse the Plan out of the Covered Person's recovery of all benefits paid by the Plan. The Plan will be reimbursed prior to the Covered Person receiving any monies recovered from a Third Party or their insurer as a result of judgment settlement or otherwise.

Reshan Holmes and her representatives have failed to turn over the monies to the Plan and the accounts described previously were established at Bancorp South by the Chancery Clerk.

CONCLUSIONS OF LAW

Plaintiff is entitled to seek equitable restitution in the form of a constructive trust when identifiable monies are held by a defendant and plaintiff is entitled to the monies. Great-West Life Annuity Ins. Co. v. Knudson, 534 U.S. 204, 213, 122 S. Ct. 708, 714 (2002). In the instant case, the funds at question are traceable and identifiable to Reshan Holmes and are owed to defendant by the terms of the Plan. See, IBEW-NECA Southwestern Health and Benefit Fund v. Douthitt, 211 F.Supp. 2d 812 (N.D. Texas 2002).

While the court does not lightly view the turning over of funds set aside for an injured minor, a participant in a health benefit plan agrees to abide by all the provisions of the plan by accepting benefits. Jacobs v. Pickands Mather & Co., 933 F.2d 652, 656 (8th Cir. 1991). Under the clear terms of the Plan, plaintiff is entitled to reimbursement in the amount of \$46,229.45 for medical expenses paid on behalf of Reshan Holmes. These funds are held by defendant Bancorp South.

Finally, it is clear that state laws are preempted by ERISA to the extent they attempt to regulate a health plan's effort to enforce a subrogation/reimbursement provision in a health plan. FMC Corp. v. Holliday, 498 U.S. 52, 64 (1990). See, also, Great-West Life & Annuity Ins. Co. v. Moore, 133 F.Supp 2d 677 (N.D. Ill. 2001).

The plaintiff is entitled to a constructive trust for the monies held by Bancorp South in account #53434577 and to reimbursement up to the amount of \$46,229.45. If interest has caused that account to be greater than \$46,229.45, the amount greater than the plaintiff's claim shall be retained for Reshan Holmes. Plaintiff's motion for summary judgment is **granted**. A separate judgment will be entered.

SO ORDERED this 6th day of February, 2003.



JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE

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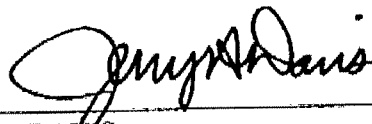
BILL BENSON, ET AL

DEFENDANTS

FINAL JUDGMENT

Pursuant to the Memorandum Opinion of this date, judgment is entered for the plaintiff Bauhaus USA, Inc. The funds held by the defendant Bancorp South in account #53434577 on behalf of Reshan Holmes are deemed to be held in constructive trust for plaintiff Bauhaus USA, Inc., up to an amount of \$46,229.45. Bancorp South shall reimburse Bauhaus USA, Inc., from account #53434577 all monies held not to exceed \$46,229.45 within fourteen days of this order.

SO ORDERED this 6th day of February, 2003.



JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE