IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JILLIAN GRATZ and	:	
TYLER GRATZ,	:	**Civil No. 3:19-CV-1341**
	:	
Plaintiffs,	:	**(Judge Mariani)**
	:	
v.	:	**(Magistrate Judge Carlson)**
	:	
MICHAEL GRATZ,	:	
	:	
Defendant.	:	

REPORT AND RECOMMENDATION

I. Introduction and Statement of the Case

This case, which comes before us for consideration of a motion to dismiss (Doc. 9), presents issues regarding the scope of federal preemption under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1101. This federal preemption question is cast against the backdrop of intra-family strife concerning an inheritance; specifically, the designation of beneficiaries under a workplace life insurance policy issued to the late Dr. Richard Gratz.

The pertinent facts, as set forth in the plaintiffs' amended complaint and other undisputed records, are as follows: The plaintiffs, Jillian and Tyler Gratz, are the natural born children of Dr. Richard Gratz. (Doc. 7, ¶¶ 2-3). The defendant, Michael

Gratz, was Dr. Gratz's brother. (Id., ¶¶ 1, 4). In addition to being Dr. Gratz's older brother, Michael Gratz is also an insurance agent. (Id., ¶ 9).

At the time of his death Dr. Gratz was a shareholder in the Lackawanna Medical Group, P.C. (LMG). (Id., ¶ 10). As a shareholder in LMG, Dr. Gratz received an array of personnel benefits including health insurance, holiday pay and various forms of leave. (Id., ¶ 11). In connection with this medical practice, Dr. Gratz and the other shareholder physicians also received keyman life insurance policies with a $1,000,000 death benefit, which designated LMG as the beneficiary in order to fund any individual physician's stock purchase obligations in the event of the doctor's death. (Id., ¶ 12). Over time, LMG determined that it no longer required the full $1,000,000 value of this policy to fund these obligations. Accordingly, the medical practice modified these policies to require that LMG be designated as the beneficiary on 20% of the policy process, $200,000. Dr. Gratz, in turn, was free to designate other beneficiaries for the remaining $800,000 to be paid under this policy. (Id., ¶¶ 14-15).

According to the plaintiffs, what then followed was a tragic example of Tolstoy's aphorism that: "Happy families are all alike; every unhappy family is unhappy in its own way." Dr. Gratz initially designated his spouse, Linda, as the beneficiary on this 80% share of the $1,000,000 policy. (Id., ¶ 16). When Linda Gratz pre-deceased Dr. Gratz, the doctor executed a change of beneficiary form naming Jillian and Tyler Gratz, his children, as the beneficiaries of this $800,000 death benefit. (Id., ¶ 27).

However, according to the plaintiffs' complaint, this change of beneficiaries exposed enmity, anger, and strife within the Gratz family. Jillian and Tyler Gratz believed that Dr. Gratz had been inattentive and callous towards their mother as she struggled with the ovarian cancer, which took her life in 2015. (Id., ¶¶ 18-45). Dr. Gratz, in turn, allegedly began following an increasingly erratic emotional course. From the plaintiffs' perspective, Michael Gratz, the doctor's brother, exploited this strife and Dr. Gratz's emotional fragility, insinuated himself into the doctor's confidence, and planted seeds of distrust and discord between the doctor and his children. (Id.) Ultimately, according to the plaintiffs, these seeds of distrust bore fruit as Michael Gratz prevailed upon his brother to alter the beneficiary designation on this policy to name Michael Gratz as the sole beneficiary of this $800,000 death benefit, a change of beneficiary designation which only came to light for the plaintiffs after Dr. Gratz passed away in January of 2019. (Id., ¶¶ 43-45).

On the basis of these averments, Jillian and Tyler Gratz initially lodged this complaint in the Court of Common Pleas of Lackawanna County, bringing a state law claim that Michael Gratz exerted undue influence over his emotionally fragile brother and through his "contrived manipulation of [Dr. Gratz]" became the beneficiary of this $800,000 death benefit. (Doc. 1-1, ¶ 42). Michael Gratz then removed this case to federal court (Doc. 1), and filed this motion to dismiss, arguing that the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1101, preempts any state law undue influence claims brought by Jillian and Tyler Gratz. (Doc. 9). This motion is fully briefed by the parties, and is therefore ripe for resolution.

This motion to dismiss, in its own way, exposes another fundamental truth of familial strife: the mutually destructive quality of such internecine conflict between relatives. For the reasons set forth below, to the extent that Jillian and Tyler Gratz are asserting a state law claim of undue influence by their uncle, Michael Gratz, it is recommended that this motion to dismiss be granted since such claims are preempted by ERISA. However, Michael Gratz's victory over his niece and nephew may well be a Pyrrhic success, since ERISA recognizes a federal cause of action for undue influence which is largely grounded upon state law principles. Therefore, these state law claims should be dismissed without prejudice to the plaintiffs asserting an undue influence claim under ERISA.

II. <u>Discussion</u>

A. <u>Motion to Dismiss – Standard of Review</u>

A motion to dismiss tests the legal sufficiency of a complaint. It is proper for the court to dismiss a complaint in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure only if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). With respect to this benchmark standard for the legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

> Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), continuing with our opinion in Phillips [v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008)], and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal, –U.S.–, 129 S. Ct. 1937 (2009), pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox, Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally, a court need not "assume that a . . . plaintiff can prove facts that the . . . plaintiff has not alleged." Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic

Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action, a plaintiff must provide some factual grounds for relief which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do." Id., at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a motion to dismiss, a court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Id., at 679. According to the Supreme Court, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id., at 678. Rather, in conducting a review of the adequacy of a complaint, the Supreme Court has advised trial courts that they must:

> [B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id., at 679.

Thus, following Twombly and Iqbal, a well-pleaded complaint must contain more than mere legal labels and conclusions; it must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

> [A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

As the Court of Appeals has observed:

> The Supreme Court in Twombly set forth the "plausibility" standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570, 127 S. Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S. Ct. 1955). This standard requires showing "more than a sheer possibility that a defendant has acted unlawfully." Id. A complaint which pleads facts "merely consistent with" a defendant's liability, [ ] "stops short of the line between possibility and plausibility of 'entitlement of relief.' "

Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011), cert. denied, 132 S. Ct. 1861 (2012).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis:

> First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Iqbal, 129 S. Ct. at 1947. Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Id., at 1950. Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief."

Santiago v. Warminster Twp., 629 F.3d 121, 130 (3d Cir. 2010) (quoting Iqbal, 129 S. Ct. at 1950).

In considering a motion to dismiss, the court generally relies on the complaint, attached exhibits, and matters of public record. Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2007). The court may also consider "undisputedly authentic document[s] that a defendant attached as an exhibit to a motion to dismiss if the plaintiff's claims are based on the [attached] documents." Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993). Moreover, "documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered." Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 560 (3d Cir. 2002); see also U.S. Express Lines, Ltd. v. Higgins, 281 F.3d 382, 388 (3d Cir. 2002) (holding that "[a]lthough a district court may not consider matters extraneous to the pleadings, a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss in one for summary judgment”). However, the court may not rely on other parts of the record in determining a motion to dismiss, or when determining whether a proposed amended complaint is futile because it fails to state a claim upon which relief may be granted. Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994).

B. ERISA Preemption

This motion to dismiss advances a single narrow legal issue, raising a defense to any state law undue influence claims based upon the contention that ERISA preempts this field. That statute, which was designed to create uniform standards governing employee benefit plans, contains an express preemption provision, which states that ERISA “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) [of the Act].” 29 U.S.C. § 1144 (a). “The scope of ‘[s]tate laws’ that may ‘relate to’ a plan is expansive, encompassing ‘all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.’ This includes not only state statutes, but also common law causes of action.” Plastic Surgery Ctr., P.A. v. Aetna Life Ins. Co., 967 F.3d 218, 226 (3d Cir. 2020) (quoting § 1144(c)(1)).

Notwithstanding the sweeping language of this express preemption provision, defining the precise contours of ERISA preemption has proven to be “a nettlesome task.” Plastic Surgery Ctr., P.A., 967 at 225. In this regard, the Third Circuit has recently summarized the general principles that guide our ERISA preemption analysis in the following terms:

> [T]o make clear that ERISA's mandates supplanted the patchwork of state law previously in place and to ensure that plans were not crippled by the administrative cost of complying with not only ERISA, but also innumerable, potentially conflicting state laws, see Gobeille, 136 S. Ct. at 943–44; *Menkes*, 762 F.3d at 293, Congress enacted section 514(a)—a broad express preemption provision, which "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a); see Ingersoll-Rand, 498 U.S. at 138, 111 S.Ct. 478. The scope of "[s]tate laws" that may "relate to" a plan is expansive, encompassing "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1). This includes not only state statutes, but also common law causes of action. See Menkes, 762 F.3d at 294.
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> Recognizing that "[i]f 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course," N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 655, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995), the Supreme Court has sought to craft a functional test for express preemption, instructing that a state law "relates to" an employee benefit plan if it has either (1) a "reference to" or (2) a "connection with" that plan, Shaw, 463 U.S. at 96–97, 103 S.Ct. 2890. The first applies "[w]here a State's law acts immediately and exclusively upon ERISA plans ... or where the existence of ERISA plans is essential to the law's operation." Gobeille, 136 S. Ct. at 943 (alternations in original) (citation omitted). The second covers state laws that "govern[ ] ... a central matter of plan administration or interfere[ ] with nationally uniform plan administration," and those state laws that have "acute, albeit indirect, economic effects [that] force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers." Id. (second alteration in original) (internal quotations marks and citations omitted). The latter inquiry is guided by "the objectives of the ERISA statute," which provide a blueprint for "the scope of the state law that Congress understood would survive." Id. (citation omitted).

Plastic Surgery Ctr., P.A., 967 F.3d at 226–27.

These general principles, in turn, have led courts to explain that for ERISA preemption purposes there exist:

> [T]wo overlapping categories of claims "premised on" ERISA plans: (a) claims predicated on the plan or plan administration, e.g., claims for benefits due under a plan, Menkes, 762 F.3d at 296 (citing Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 47–48, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987)); Kollman v. Hewitt Assocs., LLC, 487 F.3d 139, 150 (3d Cir. 2007), or where the plan "is a critical factor in establishing liability," Ingersoll-Rand, 498 U.S. at 139–40, 111 S.Ct. 478; accord De Buono v. NYSA-ILA Med. & Clinical Servs. Fund, 520 U.S. 806, 815 & n.14, 117 S.Ct. 1747, 138 L.Ed.2d 21 (1997); and (b) claims that "involve construction of [the] plan[ ]," 1975 Salaried Retirement Plan for Eligible Emps. of Crucible, Inc. v. Nobers, 968 F.2d 401, 406 (3d Cir. 1992), or "require interpreting the plan's terms," Menkes, 762 F.3d at 294.

Id. at 230. In other words, a state law:

> [W]ill be preempted if that benefit "is premised on ... the existence of a[n ERISA] plan," Ingersoll-Rand, 498 U.S. at 140, 111 S.Ct. 478, or if "the existence of ERISA plans is essential to the law's operation," Gobeille, 136 S. Ct. at 943 (quoting Cal. Div. of Labor Standards Enf't v. Dillingham Constr., N.A., 519 U.S. 316, 325, 117 S.Ct. 832, 136 L.Ed.2d 791 (1997)). Put differently, if "the court must find ... that an ERISA plan exists," Ingersoll-Rand, 498 U.S. at 140, 111 S.Ct. 478, to establish that element, such that "there simply is *no* cause of action if there is no plan," id., then "the court's inquiry must be directed to the plan," and "this ... cause of action 'relate[s] to' an ERISA plan," id. (second alteration in original) (citation omitted).

Id. at 240.

Applying these legal benchmarks, courts have frequently held that state law claims, like the undue influence claim advanced here, which entail disputes over distribution of benefits under a plan covered by ERISA are preempted by this federal statute, since those claims are premised upon the existence of a plan and involve claims for benefits under that plan. Thus, "there is little doubt that the state law causes of action for improper execution of a change of beneficiaries and undue influence are preempted by ERISA." Clark v. Bd. of Trustees S.S. Trade Ass'n, Int'l Longshoremen's Ass'n Ben. Tr. Fund, 896 F.2d 1366 (4th Cir. 1990). See e.g., Plastic Surgery Ctr., P.A., 967 F.3d at 240 ((state law unjust enrichment claim preempted by ERISA); Tinsley v. Gen. Motors Corp., 227 F.3d 700, 704 (6th Cir. 2000) (state undue influence claim preempted by ERISA); Davis v. Adelphia Commc'ns Corp., 475 F. Supp. 2d 600, 604 (W.D. Va. 2007) (same); Neidich v. Estate of Neidich, 222 F. Supp. 2d 357, 375 (S.D.N.Y. 2002) (citing Raff v. Travelers Insurance Co., 90 Civ. 7673, 1996 WL 137310, at *3–4 (S.D.N.Y. 1996)) (held state law undue influence and unjust enrichment claim preempted).

The fact that state law undue influence claims involving benefit plans are preempted by ERISA does not mean, however, that persons who believe that they have been victimized through the exercise of undue influence upon an ERISA plan beneficiary are without legal recourse. Quite the contrary, given this federal preemption, in the absence of a state law undue influence claim, plaintiffs may pursue a claim of undue influence under ERISA itself. See e.g., Tinsley, 227 F.3d at 704; Davis, 475 F. Supp. 2d at 604. Moreover, while the relief available under

ERISA may differ from that afforded by state law, the elements of any federal ERISA undue influence claim parallel those of a state law claim. ERISA provides no explicit statutory text defining undue influence claims. Accordingly:

> Since ERISA does not contain any provisions regulating the problem of beneficiary designations that are forged, the result of undue influence, or otherwise improperly procured, it appears that federal common law must apply to [these] claims. Furthermore, because there is no established federal common law . . . dealing with forgery and undue influence in the designation of beneficiaries, [courts often] look to state-law principles for guidance.

Tinsley, 227 F.3d at 704. It is against this legal framework that we turn to a consideration of whether Michael Gratz may assert ERISA preemption against his niece and nephew as a bar to their pursuit of allegations that he exerted undue influence over their father and caused them to be excluded from receipt of these benefits.

C. The Plaintiffs' State Law Undue Influence Claims Are Preempted, But May be Pursued as Federal Claims Under ERISA.

In any effort to avoid ERISA preemption of this state law undue influence claim, Jillian and Tyler Gratz advance three arguments, none of which are ultimately persuasive.

First, the plaintiffs assert that this business life insurance benefit program and plan does not fall within the reach of ERISA. We disagree. Consistent with its broad remedial purpose, Congress has defined the reach of ERISA in sweeping terms. Under ERISA:

> The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services . . . .

29 U.S.C. § 1002(1). Therefore, the plain language of the Act encompasses workplace plans which provide "benefits in the event of sickness, accident, disability, *death* or unemployment." Id. (emphasis added). Thus, such employer-arranged life insurance policies have long been recognized as a benefit which falls within the exclusive scope of ERISA. Egelhoff v. Egelhoff ex rel. Breiner, 532 U.S. 141, 144, 121 S. Ct. 1322, 1326, 149 L. Ed. 2d 264 (2001); Sokhos v. Steward Health Care Sys. LLC, 439 F. Supp. 3d 5, 7 (D. Mass. 2020). In fact, courts have held that such joint shareholder insurance policies issued by a medical practice to physician-shareholders fall within the ambit of ERISA. See Santino v. Provident Life & Acc. Ins. Co., 276 F.3d 772, 774 (6th Cir. 2001).

Furthermore, the plaintiffs' complaint and amended complaint (Docs. 1-1 and 7), describe this workplace life insurance benefit conferred upon Dr. Gratz in terms that fall within the broad sweep of ERISA. The plaintiffs' pleadings describe these policies as keyman insurance policies set up by the practice, initially to fund business obligations of the individual shareholders. The complaint and amended complaint then explain that the policies were modified over time to allow for individuals to be designated as recipients of an $800,000 death benefit. According to the plaintiffs, over the years, Dr. Gratz took advantage of this policy provision to make at least three policy designations to his wife, his children, and later to his brother. Thus, by the plaintiff's own description, this life insurance policy had the requisite connection to the doctor's employment and the degree of structure, permanence, and continuity over time to bring it within the broad reach of ERISA. Therefore, the plaintiffs' efforts to avoid ERISA entirely by arguing that this plan falls outside the statute's scope are unavailing.

Tyler and Jillian Gratz then contend in the alternative that if ERISA applies to this workplace life insurance benefit, the statute does not preempt their state law undue influence claim against their uncle. However, this argument can gain no legal purchase given the settled body of caselaw which expressly extends ERISA preemption to this very class of state legal claims. See e.g., Plastic Surgery Ctr., P.A., 967 F.3d at 240. (state law unjust enrichment claim preempted by ERISA); Tinsley, 227 F.3d at 704 (state undue influence claim preempted by ERISA); Davis, 475 F. Supp. 2d at 60 (same); Neidich, 222 F. Supp. 2d at 375 (citing Raff, 1996 WL 137310, at *3–4) (held state law undue influence and unjust enrichment claim preempted). Simply put, since "there is little doubt that the state law causes of action for improper execution of a change of beneficiaries and undue influence are preempted by ERISA," this argument also fails. Clark v. Bd. of Trustees S.S. Trade Ass'n, Int'l Longshoremen's Ass'n Ben. Tr. Fund, 896 F.2d 1366 (4th Cir. 1990).

Finally, Jillian and Tyler Gratz seek to avoid ERISA preemption by inviting us to indulge in a somewhat metaphysical distinction, arguing that since this death benefit has already been paid, allowing a state law undue influence action to effectively undo the allocation of this death benefit does not directly implicate the insurance benefit, or ERISA. The difficulty with this argument is that it entirely ignores the factual context of this family's dispute and legal strife. This case is an exemplar of a bitterly divided family, but this legal dispute is firmly grounded in undue influence claims concerning the distribution of benefits under a plan covered by ERISA, these claims are premised upon the existence of the ERISA plan benefit, and the parties' claims directly relate to the benefits provided under that plan. Simply put, the state court relief sought by the plaintiffs is expressly premised upon the existence of a benefit which is covered by ERISA. In such settings ERISA plainly applies. See e.g., Plastic Surgery Ctr., P.A., 967 F.3d at 240; 896 F.2d 1366. Indeed, it would be anomalous and antithetical to the remedial scope of the Act, and its express federal preemption provision, to allow claimants to avoid the reach of ERISA by merely waiting until the ERISA benefit was received by a third-party to engage in state court litigation.

Yet, while we find that ERISA's preemption provision applies here, this conclusion does not mean that Tyler and Jillian Gratz are without legal recourse to challenge what they allege was malicious undue influence exerted by their uncle to induce their father to remove them as beneficiaries on this death benefit. Rather, it is well-settled that, in the absence of a state law undue influence claim, the plaintiffs may pursue a claim of undue influence against their uncle under ERISA itself. See e.g., Tinsley, 227 F.3d at 704; Davis, 475 F. Supp. 2d at 604. Further, as we have noted, while the relief available under ERISA may differ from that afforded by state law, the elements of this federal ERISA undue influence claim parallel those of the state law claim initially brought by the plaintiffs, since ERISA provides no explicit statutory text defining undue influence claims and "because there is no established federal common law . . . dealing with forgery and undue influence in the designation of beneficiaries, [courts often] look to state-law principles for guidance" when addressing such claims under ERISA. Tinsley, 227 F.3d at 704.

Therefore, the ultimate outcome of the motion to dismiss this complaint filed in context of this decidedly unhappy family is that this family's strife may well continue, cast now as an ERISA undue influence claim rather than a claim arising directly under state law.

III. **Recommendation**

For the foregoing reasons it is RECOMMENDED that the defendant's motion to dismiss on ERISA preemption grounds (Doc. 9), be GRANTED without prejudice to the plaintiffs asserting an undue influence claim under ERISA.

The parties are hereby placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations, or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

Submitted this 18th day of September, 2020.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge