

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
PENSION BENEFIT GUARANTY :
CORPORATION, : 13 Civ. 621 (RJS)
: :
Plaintiff, : **ECF CASE**
: :
- against - : :
: :
THE RENCO GROUP, *et al.*, : :
: :
Defendants. : :
----- X

**THE PENSION BENEFIT GUARANTY CORPORATION'S
OPPOSITION TO DEFENDANTS' PARTIAL MOTION TO DISMISS**

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PRELIMINARY STATEMENT

In January 2012, The Renco Group, Inc. (“Renco”) misrepresented the status of a pending transaction to prevent the Pension Benefit Guaranty Corporation (“PBGC”)¹ from initiating termination of two pension plans maintained by Renco’s subsidiary, RG Steel, LLC (“RG Steel”). RG Steel had suffered enormous losses and faced imminent bankruptcy. Renco was seeking financing for RG Steel to allow it to remain in business, and reported to PBGC that it expected to transfer part of its equity interest in RG Steel as part of any transaction. By transferring a sufficient amount of its equity, Renco and the other Defendants² would exit RG Steel’s “controlled group,” and Renco would escape liability for RG Steel’s pension plans. If PBGC were to terminate the plans before Renco escaped from the RG Steel controlled group, the termination liabilities would become fixed, and Renco could not escape them. Therefore, PBGC sought to terminate the plans before the transaction closed. Aware that PBGC was initiating plan termination, Renco misrepresented to PBGC that no transaction was imminent, that no transaction currently under consideration involved Renco’s equity in RG Steel, and that Renco would consider entering into a standstill agreement with PBGC. Relying on these misrepresentations, PBGC suspended its termination efforts. Renco closed on a transaction the very next business day, removing Defendants from RG Steel’s controlled group.

¹ PBGC is a wholly owned United States government corporation established to administer the pension insurance program created by Title IV of the Employee Retirement Income Security Act of 1974, *as amended* (“ERISA”). 29 U.S.C. §§ 1301-1461.

² Ilshar Capital LLC, Blue Turtles, Inc., Unarco Material Handling, Inc., Inteva Products LLC, The Doe Run Resources Corporation, and US Magnesium LLC (collectively with Renco, “Defendants”).

Within five months after Renco removed RG Steel from its controlled group, RG Steel failed and liquidated. PBGC terminated the pension plans and filed this action against Defendants. In its First Amended Complaint, PBGC alleges that Renco committed state common law fraud, fraudulent concealment, and negligent misrepresentation in January 2012. PBGC separately alleges that Renco and the other Defendants are liable under ERISA section 4069(a), 29 U.S.C. § 1369(a), for engaging in a transaction with a principal purpose of evading the liabilities of RG Steel's pension plans.

Defendants seek dismissal of PBGC's state common law claims for fraud (Count II), fraudulent concealment (Count III), and negligent misrepresentation (Count IV). Defendants do not contest that PBGC has alleged the necessary elements for these claims, but assert that ERISA bars PBGC from bringing the claims. *See generally* Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiff's Amended Complaint ("Memo"). Defendants argue that ERISA section 4069(a) provides the sole means for PBGC to pursue former controlled- group members. Because they characterize PBGC's state common law claims as an attempt to create a new remedy and supplement Title IV of ERISA, they conclude that the state common law claims are preempted.

Contrary to Defendants' arguments, the Second Circuit has recognized that garden-variety fraud claims are not preempted, even when the fraud occurs in the context of an ERISA-regulated plan. This Second Circuit precedent should be dispositive here. Moreover, Defendants' arguments flow from a flawed premise. Defendants argue that ERISA section 4069(a)'s "reach-back" liability provides the only avenue for PBGC to seek relief against Renco. PBGC's fraud claims, however, do not seek to pursue Renco as a former controlled-group member. To the contrary, PBGC is seeking to hold Renco accountable for the plan termination

that, but for Renco's fraud, would have occurred before the January 2012 transaction, and to put PBGC back in the position that it would have been in if Renco had not lied.

Because PBGC's state common law claims are not preempted and do not otherwise conflict with Title IV of ERISA, Defendants' partial motion to dismiss should be denied.

STATEMENT OF FACTS

On or around March 1, 2011, Renco entered into an agreement to purchase certain steel mills from Severstal US Holdings II, Inc. and certain affiliates (collectively "Severstal"). First Amended Complaint ("Compl.") at ¶ 14. Renco consolidated these steel mills under the newly formed RG Steel, a wholly owned subsidiary of Renco. *Id.* at ¶ 15. Renco's consideration to Severstal included cash, a secured promissory note, and the assumption of various debts and liabilities. *Id.* at ¶ 16.

Upon learning of the pending transaction between Severstal and Renco, PBGC promptly contacted Severstal and Renco to obtain additional information about the transaction and its effect on the two pension plans sponsored by Severstal (the "Plans") that were being transferred as part of the sale.³ *Id.* at ¶ 17. In particular, PBGC was concerned about whether the Plans moving from Severstal's huge controlled group to the Renco controlled group would increase PBGC's risk of loss as the ultimate pension insurer. *Id.* at ¶ 18. At that time, Renco sent a letter to PBGC assuring PBGC that it faced no additional risk, discussing the advantages of the transaction, noting Renco's significant financial resources, and touting Renco's long-standing and good working relationship with PBGC. *See generally id.* at Ex. A. PBGC took no steps to block the Renco-Severstal transaction.

³ The Plans are the RG Steel Warren, LLC Hourly Employees Pension Plan and the RG Steel Wheeling, LLC Pension Plan. Prior to their termination, the Plans were sponsored by subsidiaries of RG Steel, LLC.

Shortly after Renco acquired it, RG Steel encountered financial difficulties. On December 16, 2011, PBGC received an Advance Notice of Reportable Events from RG Steel (the “Notice”), notifying PBGC that RG Steel was in the market to raise capital, and that any such transaction would include Renco’s transfer of part of its equity interest in RG Steel to a private institutional investor. *Id.* at ¶¶ 24-25. According to the Notice, the proposed transaction would result in the removal of Defendants from RG Steel’s controlled group. *Id.* at ¶ 24. PBGC promptly contacted Renco about the proposed transaction. *Id.* at ¶¶ 26, 29. Obviously concerned that the Plans were moving from the rich Renco controlled group to the failing RG Steel controlled group, PBGC expressed its concerns to Renco regarding the transaction and the controlled-group break-up’s impact on the Plans. *Id.* at ¶ 29. PBGC also informed Renco that, as of early January 2012, the Plans were already collectively underfunded by at least \$70 million on a termination basis. *Id.*

As is typical for PBGC’s review of any proposed transaction that threatens to break a controlled group, PBGC engaged in a diligence process to assess the financial condition of RG Steel and the proposed transaction’s impact on the Plans. *Id.* at ¶¶ 26, 31. This review solidified PBGC’s concerns about the removal of the financially strong Renco and other Defendants from RG Steel’s controlled group.

As is also typical, PBGC talked with Renco to discuss possible solutions to address its concerns. Specifically, PBGC requested a guarantee from Renco that Defendants would remain jointly and severally liable for any termination liabilities relating to the Plans post-transaction. *Id.* at ¶ 33. The guarantee would have had the effect of leaving the Plans in exactly the same position before and after the proposed transaction. *See id.*

At the same time that it engaged Renco to discuss a guarantee, PBGC began the approval process for initiating termination of the Plans, a step that PBGC intended to take if the negotiations with Renco broke down. Pursuant to ERISA section 4042, PBGC can initiate termination whenever, *inter alia*, PBGC's risk of long-run loss with respect to a pension plan is reasonably expected to increase unreasonably. *Id.* at ¶¶ 32, 34; *see also* 29 U.S.C. § 1342(a)(4). Based on its concerns about the proposed transaction, PBGC internally approved a proposal to initiate termination of the Plans. *Id.* at ¶ 34. PBGC also prepared to publish a notice of its decision. *Id.* As is typical in these situations, however, PBGC further determined that it would not take the draconian step of terminating the Plans if PBGC could come to an acceptable agreement with Renco. *See id.* at ¶ 36.

On Friday, January 13, 2012, PBGC informed Renco that it intended to initiate termination of the Plans. *Id.* at ¶ 35. To stop PBGC from acting and fixing Renco's pension liability, Renco falsely represented that no transaction was imminent, that no transaction then under consideration involved the transfer of any of Renco's equity interest in RG Steel, and that Renco was amenable to discussing a standstill agreement with PBGC. *Id.* Relying on these misrepresentations, PBGC suspended the termination process and sent Renco a draft standstill agreement. *Id.* at ¶ 36.

Rather than sign the standstill agreement, Renco closed on a transaction with an affiliate of Cerberus Capital Management, L.P. ("Cerberus") on Tuesday, January 17, 2012, the very first business day after its false representation to PBGC (the "Transaction"). *Id.* at ¶ 39. Thereafter, Renco called PBGC and stated that the Transaction with Cerberus had closed and that Defendants were no longer members of RG Steel's controlled group. *See id.* Because the controlled-group relationship between Renco and RG Steel was immediately broken when Renco

secretly closed with Cerberus, PBGC's opportunity to terminate the Plans and fix Renco's liability was lost.

PBGC's concerns about RG Steel proved well founded, as RG Steel declared bankruptcy less than five months after the close of the Transaction. *Id.* at ¶ 43. RG Steel subsequently liquidated, and PBGC entered agreements with the Plan administrators that (1) terminated each of the Plans pursuant to 29 U.S.C. § 1342(c); (2) established August 31, 2012, as each Plans' termination date; and (3) appointed PBGC as statutory trustee for each of the Plans. *Id.* at ¶ 47. PBGC expects to recover little or nothing of the \$97 million in termination liabilities from the liquidating RG Steel bankruptcy estate.

ARGUMENT

In reviewing a motion to dismiss for failure to state a claim, “the Court must accept all well-pleaded allegations contained in the complaint as true, and must draw all reasonable inferences in favor of the plaintiff.”⁴ “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims”⁵ The “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”⁶

⁴ *Esposito v. Deutsche Bank AG*, 07 Civ. 6722 (RJS), 2008 WL 5233590, at *3 (S.D.N.Y. Dec. 16, 2008) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)); *see also Goonan v. Fed. Reserve Bank of N.Y.*, 12 Civ. 3859, 2013 WL 69196, at *4 (S.D.N.Y. Jan. 7, 2013).

⁵ *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 378 (2d Cir.1995) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

I. ERISA DOES NOT PREEMPT PBGC'S STATE COMMON LAW CLAIMS AGAINST RENCO.

Defendants argue that PBGC's state law claims are preempted by ERISA. They assert that ERISA section 514 "expansively preempts any state law claim related to [Title IV] of ERISA and to the PBGC's enforcement" thereof. Memo at 16. They also focus on the "complex and reticulated" nature of Title IV, and Title IV's explicit tools for PBGC to pursue liabilities resulting from a pension plan's termination. *See* Memo at 11-12. Defendants' claim that Congress did not intend to allow PBGC to supplement the enforcement provisions of Title IV, and that PBGC's state law fraud claims must be preempted. Defendants are wrong about preemption, however. ERISA preemption as currently interpreted by the courts is not as expansive as Defendants claim. And the fraud counts in PBGC's complaint do not interfere with or supplement ERISA, but rather are wholly consistent with ERISA's core purposes.

A. The Framework of Title IV of ERISA and ERISA Preemption Generally.

Title IV of ERISA establishes a detailed framework for PBGC to administer the pension insurance program.⁷ Among other provisions, Title IV establishes reporting requirements for companies that sponsor pension plans.⁸ This reporting provides PBGC with information about events that may represent a financial risk to PBGC and the Title IV insurance program.⁹

⁷ *See generally* 29 U.S.C. §§ 1301-1461 (2006 & Supp. V 2011).

⁸ 29 U.S.C. § 1343; *see also* 29 C.F.R. Part 4043.

⁹ *See, e.g.*, 29 C.F.R. § 4043.62 (requiring advanced notification of certain transactions that will cause a change in a controlled group).

Title IV also establishes the framework for pension plan termination.¹⁰ It sets the conditions for plan sponsors to voluntarily seek plan termination and also for PBGC to initiate plan termination. Specifically, PBGC can initiate termination, *inter alia*, to protect against the risk that PBGC's long-run loss with respect to a plan may reasonably be expected to increase unreasonably unless the plan is terminated.¹¹ Such termination is appropriate if necessary to protect the plan participants, the plan's assets, or PBGC's insurance funds.¹²

Termination of a pension plan covered by Title IV of ERISA triggers liabilities for the plan sponsor and members of its controlled group.¹³ Upon termination of a pension plan, the plan's contributing sponsor and each member of its controlled group¹⁴ are jointly and severally liable to PBGC for the plan's unfunded benefit liabilities.¹⁵ They are also jointly and severally liable for unpaid funding contributions owed to the pension plan, and unpaid premiums owed to

¹⁰ See 29 U.S.C. §§ 1341, 1342.

¹¹ 29 U.S.C. § 1342(a)(4).

¹² 29 U.S.C. § 1342(c); see also *PBGC v. Pension Comm. of Pan Am. World Airways, Inc. (In re Pan Am. World Airways, Inc. Coop. Ret. Income Plan)*, 777 F. Supp. 1179, 1182-83 (S.D.N.Y. 1991); *PBGC v. FEL Corp.*, 798 F. Supp. 239, 242 (D.N.J. 1992).

¹³ See 29 U.S.C. §§ 1306, 1307, 1362.

¹⁴ Generally, a controlled group includes one or more chains of trades or businesses connected through a controlling interest of at least 80%. See 29 U.S.C. §§ 1301(a)(14)(A), 1301(b)(1); 29 C.F.R. §§ 4001.2, 4001.3(a)(1); 26 C.F.R. §§ 1.414(c)-1, 1.414(c)-2.

¹⁵ 29 U.S.C. § 1362. The amount of a plan's unfunded benefit liabilities is equal to the value of the plan's benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16)) as of the pension plan termination date minus the current value of the pension plan's assets.

PBGC.¹⁶ In certain circumstances, plan termination also results in joint and several liability for termination premiums of \$1,250 per plan participant, payable for three years.¹⁷ Additionally, Title IV establishes liability for any person that engages in a transaction with a principal purpose of evading or avoiding a pension plan's liabilities, if that plan terminates within five years after the evasive transaction.¹⁸ In those circumstances, that person and any members of its controlled group remain liable for the plan.¹⁹

ERISA also contains a broad preemption provision. ERISA section 514 provides, in relevant part, that:

Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter *relate to any employee benefit plan . . .*²⁰

ERISA does not define the term "relate to any employment benefit plan," and courts have struggled to determine its scope.²¹ Nonetheless, courts have recognized that ERISA's preemption provision is not unlimited.²²

¹⁶ See 29 U.S.C. §§ 1306, 1307, 1362.

¹⁷ See 29 U.S.C. § 1306(a)(7).

¹⁸ See 29 U.S.C. § 1369(a).

¹⁹ *Id.*

²⁰ 29 U.S.C. § 1144(a) (emphasis added).

²¹ See *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 813-15 (1997) (discussing prior decisions attempting to construe the "relate to" provision).

²² See, e.g., *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 661-62 (1995).

Defendants cite several older cases that took an expansive view of the ERISA preemption provision.²³ But “the analysis of ERISA preemption must start with the presumption that ‘Congress does not intend to supplant state law.’”²⁴ Defendants ignore the teaching of their own cited cases, which note that ERISA preemption, as interpreted by the Supreme Court, is “not a categorical rule barring state causes of action that may overlap with ERISA, but rather an application of the general principle that preemption depends on whether state remedies are consistent with ERISA’s core purposes.”²⁵ Indeed, courts have recognized that, *inter alia*, state law fraud claims are not necessarily preempted by ERISA,²⁶ as “the intent of Congress ‘was not to foreclose every state action with a conceivable effect upon ERISA plans, but to maintain exclusive federal control over the regulation of such plans.’”²⁷

In addition to express preemption pursuant to ERISA section 514, state laws may also be subject to field preemption and conflict preemption. As noted above, courts are retreating from a broad interpretation of ERISA’s preemption provision toward a narrower reading that is

²³ See, e.g., Defendants’ Memo at 16 (citing *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990)) and 20 (citing *Ingersoll and Diduck v. Kaszycki & Sons*, 974 F.3d 270 (2d Cir. 1992)).

²⁴ *Stevenson v. Bank of N.Y. Co.*, 609 F.3d 56, 59 (2d Cir. 2010) (quoting *Gerosa v. Savasta & Co.*, 329 F.3d 317, 323 (2d Cir. 2003)).

²⁵ *Gerosa*, 329 F.3d at 325.

²⁶ See, e.g., *Trs. of the AFTRA Health Fund v. Biondi*, 303 F.3d 765, 775 (7th Cir. 2002); *Geller v. County Line Auto Sales, Inc.*, 86 F.3d 18, 23 (2d Cir. 1996).

²⁷ *Geller*, 86 F.3d at 22 (quoting *NYS Health Maint. Org. Conference v. Curiale*, 64 F.3d 794, 803 (2d Cir. 1995)).

consistent with these traditional forms of preemption.²⁸ Field preemption is a type of implied preemption, applicable where the courts infer that Congress has enacted legislation to displace any state law.²⁹ Conflict preemption applies if “local law conflicts with federal law such that it is impossible for a party to comply with both or the local law is an obstacle to the achievement of federal objectives.”³⁰

B. PBGC’s State Law Fraud Claims are Not Preempted by ERISA.

1. Garden variety fraud claims that occur in the context of a pension plan are not preempted.

The Second Circuit has recognized that ERISA preemption does not apply to state common law fraud claims, like the claims alleged by PBGC. In *Geller v. County Line Auto Sales, Inc.*, the Second Circuit held that the plaintiff-trustees’ state law fraud claim was not preempted by ERISA, because plaintiffs were simply attempting to obtain the remedy that they were wrongfully denied by the defendants’ fraud – denial of medical benefits to an ineligible person.³¹ The rationale from the *Geller* decision is equally applicable here, requiring the Court to reject Renco’s preemption claim.

²⁸ See *Stevenson*, 609 F.3d at 59 (“Therefore, we look to the structure and objectives of [ERISA] as a means of determining the scope of preemption.”); see also *Gerosa*, 329 F.3d at 323 (“Therefore, ‘[w]e simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive.’” (quoting *Travelers Ins. Co.*, 514 U.S. at 656)).

²⁹ See, e.g., *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm’n*, 634 F.3d 206, 207-08 (2d Cir. 2011).

³⁰ *N.Y. SMSA Ltd. P’ship v. Town of Clarkstown*, 612 F.3d 97, 104 (2d Cir. 2010) (citations omitted).

³¹ 86 F.3d 18, 23 (2d Cir. 1996).

In *Geller*, the plaintiffs were trustees of the GNY Automobile Dealers Health and Welfare Trust (the “Trust”), which provided medical benefits to members of the GNY Automobile Dealers Association and their employees. To be eligible for benefits under the Trust, a participant had to be a full-time employee of a member-employer.³² The trustees brought suit against one of the members, County Line Auto Sales, Inc. (“County Line”), and two of County Line’s officers, claiming that defendants falsely stated on numerous occasions that Patricia Kleppner was a full-time employee at County Line to obtain medical benefits from the Trust. Relying on those lies, plaintiffs paid \$104,555 from the Trust for medical services to Kleppner. The district court granted defendants’ motion to dismiss the fraud claim, finding that it was preempted.³³

On appeal, the Second Circuit vacated that dismissal, holding that ERISA preemption did not apply. In reaching this conclusion, the court stated:

In this case, however, allowing the plaintiffs to pursue their common law fraud claim would in no way compromise the purpose of Congress and does not impede federal control over the regulation of employee benefit plans. To the contrary, insuring the honest administration of financially sound plans is critical to the accomplishment of ERISA’s mission. ERISA is designed to protect the interests of participants and beneficiaries of employee benefit plans, and the preemption provision should not be read to contravene the statute’s underlying design.³⁴

The Second Circuit explained that “although the defendants improperly administered the plan, the essence of the plaintiffs’ fraud claim does not rely on the pension plan’s operation or

³² *Id.* at 19.

³³ *Id.* at 20.

³⁴ *Id.* at 23 (internal quotations and citation omitted).

management.”³⁵ Rather the plaintiffs claimed that “the defendants fraudulently misrepresented that Kleppner was a full-time employee[,] and . . . in reliance on [that] representation, the plaintiffs paid out more than \$104,000 on her behalf.”³⁶ The Second Circuit concluded that “[t]he plan was only the context in which this garden variety fraud occurred.”³⁷

Like the defendants in *Geller*, Renco lied to prevent PBGC from protecting its rights under ERISA.³⁸ Through its misrepresentations, Renco prevented PBGC from exercising its authority under Title IV of ERISA to initiate Plan termination before the Transaction closed. This deception allowed Renco to exit RG Steel’s controlled group before Renco’s liability for the Plans’ termination could be fixed. PBGC’s state common law claims seek to redress this wrong – allowing PBGC to hold Renco accountable for the Plans as if they had terminated before the Transaction closed.³⁹ Rather than violating ERISA’s preemption rules, PBGC’s state common

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See id.* (noting that plaintiffs’ claim sought “to advance the rights and expectations created by ERISA”); *see also Gerosa v. Savasta & Co.*, 329 F.3d 317, 329-30 (2d Cir. 2003) (finding that plaintiffs’ state-law malpractice claims were not preempted, and noting that allowing the claims to proceed would further ERISA’s purposes).

³⁹ The cases cited by Defendants do not establish otherwise. Although each case involved PBGC as a party, none of the cases concerned PBGC’s assertion of state law fraud claims (or of any other claims). *PBGC v. Boury, Inc.* addressed whether ERISA preempted the application of West Virginia state lien law to PBGC’s statutory liens under Title IV of ERISA. 5:02CV161, 2009 WL 3334924 (N.D. W.Va. Oct. 14, 2009). In *Coleman v. PBGC*, a group of participants in a terminated pension plan sued PBGC to obtain early retirement benefits. 196 F.R.D. 193 (D.D.C. 2000). Plaintiffs argued that an amendment suspending those benefits violated ERISA, and argued in the alternative that the amendment was based on PBGC’s misrepresentations. *Id.* at 195-96. Among other reasons for finding the misrepresentation claim preempted, the court noted that plaintiffs were seeking to use state law as an alternative basis for recovering the same ERISA benefits. *See id.* at 197 & n.4. Finally, in *United Steelworkers of America v. United Engineering, Inc.*, a union sued an employer to recover unpaid pension benefits from a

law claims will promote PBGC's ability to protect its interests by initiating plan termination ahead of transactions that create unreasonable risk for the Title IV insurance system. As a result, PBGC's state common law claims advance ERISA's purposes and goals.⁴⁰

This preemption analysis is not altered by either field preemption or conflict preemption. Field preemption requires findings (1) of Congressional intent to preempt the field the field of law, and (2) that state regulation will sufficiently interfere with federal regulation of regulation of that field.⁴¹ There is a presumption that Congress did not intend for ERISA to to preempt certain traditional areas of state regulation, including fraud.⁴² Moreover, PBGC is not PBGC is not seeking to interfere with, or supplement Title IV of ERISA. Rather PBGC is is seeking to hold Renco accountable pursuant to Title IV's termination provisions as if the fraud the fraud had not occurred. As explained above, the state common law claims will further the

terminated pension plan pursuant to the Labor Management Relations Act. 52 F.3d 1386 (6th Cir. 1995). The Sixth Circuit appropriately determined that the union's *federal* common law claims were displaced by ERISA's provision explicitly allowing PBGC to recover the full amount of a plan's unfunded benefit liabilities from the employer. *Id.* at 1393-94.

⁴⁰ See *Geller*, 86 F.3d at 23; *cf. Stevenson v. Bank of N.Y. Co., Inc.*, 609 F.3d 56, 61-62 (2d Cir. 2010) (finding that plaintiff's state common law claims were not preempted by ERISA, in part because the claims did not "purport to require a plan administrator, employer, or beneficiary to follow a standard inconsistent with those provided by ERISA," or affect the plans "in a way that threatens ERISA's goal of uniformity"); *Gardner v. Heartland Indus. Partners, LP*, 715 F.3d 609, 614-15 (6th Cir. 2013) (finding plaintiffs' state common law claims not preempted by ERISA since a "determination of Defendants' liability [] does not require any interpretation of the [pension plan's] terms" even though "those terms would likely be relevant in measuring the amount of Plaintiffs' damages").

⁴¹ *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206, 210-11 (2d Cir. 2011).

⁴² See, e.g., *Geller*, 86 F.3d at 22; *Trs. of the AFTRA Health Fund v. Biondi*, 303 F.3d 765, 775 (7th Cir. 2002) ("Thus, far from thwarting ERISA's stated statutory objections, the Trustee's common law fraud claim is an attempt to protect the financial integrity of the fund, which is certainly in the Plan participants' and beneficiaries' best interests, as well as being consistent with the Trustees' fiduciary obligations under ERISA.").

further the goals of Title IV of ERISA by maintaining PBGC's ability to initiate pension plan termination in advance of a transaction that would unreasonably increase PBGC's risk.⁴³

Conflict preemption applies if "local law conflicts with federal law such that it is impossible for a party to comply with both or the local law is an obstacle to the achievement of federal objectives."⁴⁴ Defendants' argue that PBGC's state common law claims are subject to conflict preemption because PBGC is seeking to recover against Renco for "alleged circumvention of controlled group liability" through means other than ERISA section 4069(a). Memo at 20. PBGC, however, is not seeking to supplant or supplement ERISA section 4069(a). PBGC is seeking to hold Renco accountable for the Plans using the plan termination provisions explicitly provided in Title IV of ERISA. These are the very same provisions that PBGC would have utilized before the Transaction, but for Renco's misrepresentations.⁴⁵ The state common law claims will preserve the structure of Title IV, maintaining PBGC's ability to initiate plan termination ahead of transactions that unreasonably increase PBGC's risk. Accordingly, the state common law claims promote ERISA's goals, and do not implicate conflict preemption.⁴⁶

⁴³ See 29 U.S.C. §§ 1342(a)(4), (c).

⁴⁴ *N.Y. SMSA Ltd. P'ship v. Town of Clarkstown*, 612 F.3d 97, 104 (2d Cir. 2010) (citations omitted).

⁴⁵ See *Geller*, 86 F.3d at 22-23.

⁴⁶ See *id.*

2. PBGC's fraud claims do not seek to impermissibly supplement or expand PBGC's existing ERISA remedies.

PBGC's ability to bring the state common law claims against Renco is not foreclosed by the "complex and reticulated" frame work of Title IV of ERISA. Memo at 9-10. Contrary to Defendants' assertions, PBGC is not seeking to supplement or expand its already-existing rights and remedies in Title IV. PBGC is simply seeking to advance Title IV's goals by enforcing the remedy that it lost as a result of Renco's fraud.

Congress enacted ERISA section 4069(a) in 1986 to codify "an explicit prophylactic rule to protect the insurance program from companies that transfer large amounts of unfunded benefits to a weaker company or that otherwise attempt to evade liability for their pension promises."⁴⁷ Section 4069(a) served to "close obvious loopholes in the new law which, if left unattended, could jeopardize the PBGC's long-range financial stability."⁴⁸ Indeed, PBGC's First Amended Complaint against Defendants includes a separate claim under ERISA section 4069(a), alleging that a principal purpose in Renco engaging in the Transaction was to evade liability for the Plans.

To be sure, PBGC intends to pursue all of the Defendants under ERISA section 4069(a) and hopes to obtain full and complete relief under that statutory provision. But PBGC's state law claims are not an attempt to supplant ERISA section 4069(a); rather, PBGC is seeking to redress the damage to PBGC's insurance program caused by Renco's misrepresentations. These

⁴⁷ H.R. REP. NO. 99-300 (1985), pt. 2, at 278-79, *reprinted in* 1986 U.S.C.C.A.N. 756, 1985 WL 25924 (the "Report").

⁴⁸ *Id.* at 285. The Report also notes that the bill "contains a 5-year lookback limit for purposes of this provision. Thus if a distress termination occurs more than 5 years after a transaction to evade liability, there will be no liability *under this section* with respect to such transaction." H.R. REP. NO. 99-300, pt. 2, at 304 (emphasis added); *see also PBGC v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1198-99 (3d Cir. 1993) (noting that section 4069(a) served to close a statutory loophole and codify a prior court decision).

misrepresentations led PBGC not to immediately pursue plan termination before the Transaction closed, to PBGC's detriment.

Before Renco transferred 24.5% of the RG Steel equity to Cerberus, PBGC had remedies other than 4069(a) available to it. Consistent with ERISA section 4043 and PBGC's regulations, RG Steel sent to PBGC the Notice outlining Renco's potential transaction concerning RG Steel. After conducting due diligence, PBGC was concerned about the potential transaction and its effect on the Plans, and began negotiations with Renco. And consistent with Title IV of ERISA, PBGC determined that it should take the necessary actions to mitigate its risk, including initiating termination of the Plans if PBGC was unable to reach an acceptable agreement with Renco. *See* Compl. at ¶¶ 30-31, 34. Although PBGC was prepared to initiate termination of the Plans, it lost the opportunity to do so when it relied upon Renco's misrepresentations about the Transaction and Renco's amenability to considering a stand-still agreement.⁴⁹ *Id.* at ¶¶ 35-36. As a result of Renco's deceptions, PBGC was wrongfully deprived of its ability to initiate termination of the Plans before the Transaction closed.

In making false statements to PBGC, Renco disrupted the goals of Title IV of ERISA by inducing PBGC to forgo termination of the Plans. Had Renco been candid about its intent, PBGC would have terminated the Plans ahead of the Transaction, and

⁴⁹ Defendants imply that PBGC is at fault for its failure to "carry out its threat to initiate proceedings to terminate the Plans." Memo at 5. Plan termination is an extraordinary action, only used as a last resort. The facts alleged in the First Amended Complaint show that PBGC worked diligently to obtain a settlement with Renco that would have avoided termination of the Plans, but nonetheless was fully ready to move forward with termination in time to lock-in the Plans' termination liability. PBGC failed to do so only because of Renco's fraudulent statements.

would therefore hold Renco liable for the Plans' unfunded benefit liabilities and termination premiums as a member of RG Steel's controlled group.⁵⁰ Through its state law claims, PBGC is not seeking to create new Title IV remedies or alter Title IV's framework. PBGC is simply holding Renco liable for the plan termination that would have occurred but for the fraud. The state common law claims are consistent with Title IV of ERISA and will support its goals and purposes.⁵¹

Because PBGC's claims are not preempted by ERISA, Defendants partial motion to dismiss should be denied.

II. PBGC MAY PURSUE THE STATE COMMON LAW CLAIMS.

In addition to their preemption argument, Defendants assert that PBGC lacks authority under Title IV of ERISA to pursue any state law claims against Renco. *See* Memo at 13-14. This argument hinges on a clear misreading of ERISA.

Defendants rely on ERISA section 4003(e). That provision authorizes PBGC to bring civil actions to enforce (a) the provisions of Title IV, and (b) certain liens that are not applicable in this case.⁵² Defendants argue that ERISA section 4003(e)(1) "defines -- and -- limits the enforcement authority of PBGC." Memo at 13. They further note that this apparent deficiency cannot be cured through the general jurisdiction provision in 28 U.S.C. § 1345. *Id.* at 14.

⁵⁰ *See* 29 U.S.C. §§ 1306, 1307, 1362; *see also* 29 U.S.C. § 1342(a)(4). Even Defendants recognize PBGC's ability to initiate plan termination "unilaterally to 'lock-in' liability for controlled group members." Memo at 9.

⁵¹ *See Geller*, 86 F.3d at 22-23. Defendants assert in their Memo that PBGC's claim under ERISA section 4069(a) has no merit. *E.g.*, Memo at 2. Essentially, Defendants contend that Renco can make misrepresentations to PBGC without any recourse.

⁵² 29 U.S.C. § 1303(e)(1).

Section 4003(e)(1) does grant certain specific powers to PBGC, but Defendants err when they argue that that section also serves as a limitation on PBGC’s power to sue and be sued. Defendants’ argument overlooks the separate, broader grant of authority to PBGC in ERISA section 4002(b). In section 4002(b), Congress provided that:

[I]n addition to any specific power granted to [PBGC] elsewhere in [Title IV] or under that Act, [PBGC is granted] the power –

*(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal*⁵³

Not only does this section provide PBGC with open-ended authority to bring lawsuits in state and federal court, but it grants this authority in addition to the more specific powers granted elsewhere in Title IV, such as the specific powers granted in section 4003(e)(1). Section 4002(b) emphasizes that Congress’s grant of the specific powers is not meant as an implied limitation on PBGC’s broad authority.⁵⁴ Because PBGC has broad authority to pursue the state common law claims against Renco, 28 U.S.C. § 1345 provides proper grounds for jurisdiction with this Court.

⁵³ 29 U.S.C. § 1302(b) (emphasis added).

⁵⁴ *See Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 (1988) (“As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”).

CONCLUSION

For all of the foregoing reasons, Defendants' partial motion to dismiss should be denied.

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