

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

PENSION BENEFIT GUARANTY  
CORPORATION,

Plaintiff

vs.

IDAHO HYPERBARICS, INC., as  
Plan Administrator of Idaho  
Hyperbarics, Inc.  
Defined Benefit Plan,

Defendant.

Case No. 4:16-cv-00325-CWD

**MEMORANDUM DECISION AND  
ORDER RE: DEFENDANT'S  
MOTION FOR LEAVE TO FILE A  
THIRD-PARTY COMPLAINT (Dkt.  
42)**

**INTRODUCTION**

The Court has before it Idaho Hyperbarics, Inc.'s (IHI) Motion for Leave to File a Third-Party Complaint. (Dkt. 42.) The motion is ripe for the Court's consideration.<sup>1</sup> The parties have fully briefed the motion and it is now ripe for the Court's consideration. Having fully reviewed the record, the Court finds the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding

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<sup>1</sup> All parties have consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (Dkt. 20.)

delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, the hearing set for December 14, 2017, is vacated, and the motion will be decided on the record without oral argument. Dist. Idaho L. Rule 7.1(d). For the reasons that follow, the Court will deny the motion.

### **FACTUAL BACKGROUND<sup>2</sup>**

This action arises under Title IV of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1301-1461 (2012 & Supp. II 2014) (ERISA). Pension Benefit Guaranty Corporation (PBGC) brings the action under 29 U.S.C. § 1303(e)(1) to enforce the provisions of Title IV of ERISA, and to enforce a final agency determination that violations of Title IV occurred with respect to the IHI Defined Benefit Pension Plan. This is an action for enforcement of PBGC's final agency determination based on a review of the agency's administrative record under 5 U.S.C. § 706.

PBGC is a wholly owned United States government corporation established under 29 U.S.C. § 1302 to administer and enforce the provisions of the plan-termination insurance program under Title IV of ERISA. 29 U.S.C. § 1301-1461. In this case, PBGC filed its complaint under Section 1303(e)(1) following IHI's standard termination of its single-employer, Defined Benefit Pension Plan. PBGC alleges IHI violated Title IV of ERISA and applicable regulations by failing to distribute Plan assets in full satisfaction of the Plan's benefit liabilities.

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<sup>2</sup> The factual background is taken from the Court's Memorandum Decision and Order denying IHI's motion to dismiss. (Dkt. 30.)

IHI's Plan was effective December 27, 2004, and established as an Internal Revenue Code (IRC) Section 412(i) plan, which is fully and solely funded through insurance companies. The insurance policy which funded the Plan was issued by MONY Life Insurance Company of America.

On May 27, 2009, IHI filed a Form 500 with PBGC, with a proposed plan termination date of December 26, 2008. On November 15, 2010, IHI filed a Form 501 with PBGC, certifying all benefit liabilities under the Plan were satisfied, and that IHI paid a total of \$575,900 to 15 plan participants no later than March 19, 2009, which date was more than two months before IHI filed the Form 500. On April 28, 2011, PBGC notified IHI that the Plan's standard termination had been selected for audit because, in violation of Title IV of ERISA, the Plan assets were distributed to participants before IHI filed the Form 500.

During the audit, IHI submitted documentation showing that a total of only \$228,884 was distributed to participants, far less than the \$575,900 reported on the Form 501 and the aggregate value of the cash surrender checks that MONY issued on March 29, 2009. During the audit, PBGC determined that, contrary to the information reported on the Form 501, two participants received no distribution, thirteen participants received their distributions between April 14, 2011, and May 5, 2011, two participants received their distributions on April 27, 2009, and one participant received her benefit on March 1, 2010. On July 15, 2014, upon completion of the Plan audit, PBGC issued its initial determination to IHI with respect to its audit (the "Initial Determination"). In the Initial

Determination, PBGC found that IHI did not pay the Plan participants the full cash surrender value of their contracts, as required under the IRC.

PBGC made several findings in its Initial Determination, and required IHI to (a) calculate the underpayments due to participants by determining the difference between the amount each participant actually received and the full cash surrender value of their annuity contract, adding a reasonable rate of interest to the additional amounts due; (b) submit such calculations for PBGC's review; and (c) pay participants the additional amounts due. On November 12, 2014, IHI requested reconsideration of PBGC's Initial Determination. On April 28, 2015, PBGC issued its Final Determination, which upheld its earlier findings. IHI has not, however, made any of the additional benefit payments to plan participants as required by the Initial Determination or Final Determination.

PBGC filed its complaint on July 21, 2016, and later filed an amended complaint on August 25, 2016. PBGC's claim for relief alleges IHI violated Title IV of ERISA and applicable regulations, by failing to distribute Plan assets in full satisfaction of the Plan's benefit liabilities. It seeks enforcement of its determinations, as well as distribution of any additional amounts, including interest, owed to plan participants. IHI filed a motion to dismiss the amended complaint, which the Court denied on May 15, 2017. (Dkt. 30.)

IHI now argues that a third party bears responsibility for any improper administration of the Plan, and seeks to file a third party complaint against CJA & Associates. IHI retained CJA to assist it with establishing and administering a retirement

plan for IHI's employees. IHI asserts CJA played a significant role in establishing and administering the Plan through a service agreement with IHI, and therefore, to the extent PBGC's claims of improper administration against IHI succeed, the resulting liability should transfer to CJA, the party that played the most significant role in administering (and terminating) the Plan. IHI argues its claims against CJA are based on the same transactions and set of facts as PBGC's original claims, and also are dependent on the outcome of the main claim—whether the Plan was administered and terminated improperly.

PBGC, on the other hand, asserts that IHI's claims against CJA are not derivative of the underlying action between PBGC and IHI, and the outcome is not dependent upon the outcome here. PBGC argues also the plan participants would be prejudiced by delay in resolution of this case, which involves review of an administrative record (to which CJA was not a party). Accordingly, PBGC argues the third party complaint should not be allowed.

### **ANALYSIS**

“A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed. R. Civ. P. 14(a)(1). The decision to allow a third-party defendant to be impleaded is entrusted to the sound discretion of the Court. *United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 452 (9th Cir. 1983). A third-party claim may be asserted only when the third party's liability is in some way dependent on the outcome of the main claim and is

secondary or derivative of it. *Stewart v. Am. Int'l Oil & Gas Co.*, 845 F.2d 196, 199 (9th Cir. 1988). However, “it is not sufficient that the third-party claim is a related claim; the claim must be derivatively based on the original plaintiff's claim.” *United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 452 (9th Cir. 1983).

Consequently, “while Rule 14 provides the procedural mechanism for the assertion of a claim for contribution or indemnity, there must also exist a substantive basis for the third-party defendant's liability” to the third-party plaintiff. *Kim v. Fujikawa*, 871 F.2d 1427, 1434 (9th Cir. 1989) (affirming dismissal of third-party complaint because governing substantive law did not recognize a right of contribution). *see also* 6 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *FEDERAL PRACTICE AND PROCEDURE* § 1446 (2d ed. 1990) (“The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.”).

“The crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff. The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.” *Stewart*, 845 F.2d at 200 (quoting 6 *FEDERAL PRACTICE AND PROCEDURE* §1446 at 257 (1971 ed.)).

Here, IHI seeks permission to bring CJA in as a third-party defendant, because CJA was the third party administrator of the Plan. (Dkt. 42.) Within the proposed third-party complaint and prayer for relief are three state law claims: breach of fiduciary duty, breach of contract, and negligence. (Dkt. 42-1.) IHI seeks damages, including, without

limitation, any and all amounts for which IHI is held liable for the claims of PBGC. *Id.*

IHI argues its proposed third-party claims are dependent upon and derivative of PBGC's claim against IHI, because the underlying improper Plan administration and termination alleged by PBGC was the product of CJA's administration of the Plan through its service agreement with IHI. In addition, IHI argues that, if the Court finds improper administration of the Plan, CJA would be liable for the additional benefits due to the participants and beneficiaries. While the argument initially sounds appealing, it is unpersuasive to the Court for the reasons summarized below.

First, IHI conflates ERISA Title IV liability with liability for breach of fiduciary duties, breach of contract, and negligence. While IHI's claims against CJA may be based upon the alleged improper administration of the Plan, the claims are neither legally dependent upon nor derivative of the claims in the original suit. "[I]t is not sufficient that the third-party claim is a related claim; the claim must be derivatively based on the original plaintiff's claim." *One 1977 Mercedes Benz*, 708 F.2d at 452. PBGC's claim against IHI arises under Title IV of ERISA, and liability is based upon IHI's acts or omissions, not from the actions of CJA. (Dkt. 42-1 at 4.) Independent of PBGC's claim under ERISA, IHI must prove the elements of its proposed causes of action, all of which are based on a contractual relationship between IHI and CJA. Additionally, under Title IV, the Plan Administrator alone, not a third party advisor, is responsible for proper termination of the Pension Plan.<sup>3</sup> In other words, as PBGC argues, IHI cannot delegate

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<sup>3</sup> See e.g., 29 U.S.C. § § 1303, 1341.

fully its statutory responsibilities under ERISA.

Second, IHI's contention that the proposed third party complaint promotes the interests of the Plan participants and beneficiaries is unavailing. IHI relies upon several cases which cite the general principle that ERISA was enacted to promote and protect the interests of plan participants. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983) ("ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans"); *Massachusetts Mut. Life Ins. v. Russell*, 473 U.S. 134, 158 (1985) (Brennan, J., concurring) ("enforcement of strict fiduciary standards of care in the administration of all aspects of pension plans and *promotion of the best interests* of participants and beneficiaries.") (emphasis added). In this regard, IHI contends that, if the Court denies its motion, IHI likely will file for bankruptcy, which is not in the plan participants' best interests.

The Court finds IHI's argument is misplaced, however, because ERISA concerns itself with proper plan administration and terminations that serve and protect the interest of participants and beneficiaries. The principal statutory duties imposed on plan trustees relate to the proper management, administration, and investment of fund assets, the maintenance of proper records, the disclosure of specified information, and the avoidance of conflicts of interest. *Massachusetts Mut. Life Ins. Co.*, 473 U.S. at 142–43. IHI's financial health, which exists independent of the Plan and its administration, is therefore not ERISA's concern.

Finally, IHI argues allowing the third party complaint would promote judicial



economy. However, for IHI to prevail on its state law claims, discovery would be necessary, and IHI bears the burden of proving the elements of its claims against CJA. The Court fails to understand how allowing the third party complaint would promote judicial efficiency without delaying the outcome of PBGC's lawsuit. As PBGC asserts, such delay raises prejudice to the Plan participants. This lawsuit involves administrative review and likely will be resolved by the Court once dispositive motions are filed by the parties in January of 2018. IHI's proposed claims against CJA would necessitate discovery and extend proceedings regarding payment of the additional benefits to the Plan participants that PBGC claims should have been paid by IHI some eight to nine years ago, in 2009.

### **ORDER**

#### **NOW THEREFORE IT IS HEREBY ORDERED:**

- 1) Plaintiff's Motion for Leave to File Third-Party Complaint (Dkt. 42) is **DENIED**.
- 2) The hearing set for December 14, 2017, at 9:30 a.m. in Pocatello is **VACATED**.



DATED: November 15, 2017

  
Honorable Candy W. Dale  
United States Magistrate Judge