

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

GLORIA SOTHMANN,	*	
	*	
Plaintiff,	*	3-02-CV-90142
	*	
v.	*	
	*	
QUAD CITIES SURGICAL	*	
ASSOCIATES, S.C.,	*	MEMORANDUM OPINION
	*	AND ORDER
Defendant.	*	
	*	

On November 8, 2002, Plaintiff filed a two-count petition in the Iowa District Court for Scott County alleging breach of contract and violation of the Iowa Wage Payment Collection Act, Iowa Code Chapter 91A. Plaintiff seeks wages allegedly owed by Defendant under five written employment contracts, including base pay and a bonus equal to half of the net patient fees collected for her services as a surgical nurse assistant during the term of her employment. On December 3, 2002, Defendant removed the action to this Court alleging that Plaintiff's Petition is based on and requires the application of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* ("ERISA"), and that the case is therefore founded on claims or rights "arising under" federal law. On January 3, 2003, Plaintiff filed a Motion to Remand which is now before the Court. For the reasons set forth below, Plaintiff's Motion is **granted**.

I. Removal Jurisdiction

This Court, as a court of limited jurisdiction, has a duty to assure itself that it has subject matter jurisdiction in every case. *See Barclay Square Properties v. Midwest Fed. Sav. & Loan Ass'n of*

Minneapolis, 893 F.2d 968, 969 (8th Cir. 1990); *Sanders v. Clemco Indus.*, 823 F.2d 214, 216 (8th Cir. 1987). Under 28 U.S.C. § 1441(a), a defendant may remove a civil action from the state court to federal court only if the claim could have been originally brought in federal court. *Gore v. Trans World Airlines*, 210 F. 3d 944, 948 (8th Cir. 2000). The party seeking removal and opposing remand bears the burden of establishing federal subject matter jurisdiction. *See In re Business Men's Association Co. of America*, 992 F.2d 181, 183 (8th Cir. 1993); *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Amoco Oil Company*, 883 F. Supp. 403, 407-08 (N.D. Iowa 1995). The federal courts' removal jurisdiction must be strictly construed; therefore, the district court is required to resolve all doubts about federal jurisdiction in favor of remand. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 85 L.Ed. 1214, 61 S.Ct. 868 (1941). *See also Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd.*, 883 F. Supp. at 407-08. Applying these standards, the Court finds that removal jurisdiction is not proper in this case.

In its Notice of Removal, Defendant asserts that this action is within the ambit of ERISA because it concerns contributions made by Defendant on Plaintiff's behalf to an employee benefit plan referenced in the employment contracts which Plaintiff claims were breached by Defendant. Specifically, Defendant claims that the amount of the bonuses Plaintiff seeks to recover is determined by whether contributions to the retirement plan based on the bonuses were to be paid by Defendant or deducted from the amount of the bonus itself. Defendant's Answer, filed December 6, 2002 raises similar affirmative defenses based on ERISA. On this basis, Defendant urges that Plaintiff's suit "arises under" federal law and is within the original jurisdiction of the federal courts pursuant to 28 U.S.C. § 1331. (Defendant's Answer at 2).

However, the Court cannot properly consider any of these allegations in determining whether jurisdiction lies in the federal courts. The “arising under” jurisdiction of the federal courts is subject to the long-established limitations of the “well-pleaded complaint rule” articulated in *Louisville & Nashville R. Co. v. Mottley*. *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58, 63 (1987) (citing *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908)); *Gore v. Trans World Airlines*, 210 F. 3d 944, 948 (8th Cir. 2000). This rule provides that an action “arises under” federal law only if a federal question appears on the face of the properly pleaded complaint. *Hurt v. Dow Chemical Co.*, 963 F.2d 1142, 1143 (8th Cir. 1992); *Gore*, 210 F. 3d at 948. A case cannot be removed on the basis of a federal defense, including a defense of preemption, even if the defense is anticipated in the plaintiff’s complaint, and even if both parties admit that the defense is the only question truly at issue in the case.” *Hurt*, 963 F.2d at 1144 (citations omitted). *See also Franchise Tax Board*, 463 U.S. at 9-11 & n.9 (discussing the well-pleaded complaint doctrine and alternatives which have not been adopted); *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). In short, “[a] defendant is not permitted to inject a federal question into an otherwise state-law claim and thereby transform the action into one arising under federal law.” *Gore*, 210 F. 3d at 948.

A case “arises under” federal law if the complaint discloses a need for the application of federal law or if the plaintiff’s right to relief under state law requires resolution of a substantial question of federal law. *Franchise Tax Board*, 463 U.S. at 9, 13. Here, there is nothing on the face of Plaintiff’s Complaint that pertains to an employee benefit plan, ERISA, or otherwise indicates the

presence of a federal question.¹ Rather, Plaintiff asserts purely state causes of action for wages and bonuses allegedly owed under her employment contracts. Only in Defendant's Answer and Notice of Removal is it alleged that this action at all implicates ERISA, and as noted above, neither federal defenses nor other allegations beyond the complaint can bring a state action within the jurisdiction of the federal courts.

However, even where a complaint does not on its face raise a federal question, jurisdiction may lie with the federal courts if the action is within the scope of an independent corollary to the well-pleaded complaint rule – the complete preemption doctrine. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). *See also Franchise Tax Board*, 463 U.S. at 23 (citing *Avco Corp. v. Aero Lodge No. 735, Intl. Assn. of Machinists*, 376 F.2d 337, 339-40 (6th Cir. 1967, *aff'd*, 390 U.S. 557 (1968) (holding that a plaintiff may not defeat removal by omitting to plead necessary federal questions)); *Gore*, 210 F. 3d at 942; *Hurt*, 963 F.2d at 1143. The Supreme Court has held that in rare cases where Congress has clearly expressed its intent that federal law dominate a particular area, the pre-emptive force of the federal statute is so “extraordinary” that it “converts an ordinary state common law complaint into one stating a federal claim for the purposes of the well-pleaded complaint rule.” *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987). In such cases, federal law so occupies the field that any complaint alleging facts that come within the scope of the statute is deemed to be “completely federal from the beginning,” even if the complaint pleads purely state causes of

¹ The Complaint does reference employment contracts, which in turn reference the Plan, but these were not appended to the Complaint and are before the Court only as Exhibits to Defendant's Notice of Removal.

action. *Hurt*, 963 F. 2d at 1144.

Defendant appears to argue on this Motion that Plaintiff's claims are necessarily federal in nature under the "ordinary preemption" of 29 U.S.C. 1144(a) of ERISA, which preempts all state laws "insofar as they . . . relate to an employee benefit plan." 29 U.S.C. 1144(a). The Supreme Court has given the phrase "relate to" its broad common-sense meaning, such that a state law "relates to" a benefit plan "in the normal sense of the phrase if it has a connection with or reference to such plan." *Shaw v. Delta Airlines*, 463 U.S. 85, 97 (1983). However, in *Franchise Tax Board*, the Supreme Court held that "ERISA preemption [under 29 U.S.C. 1144(a)], without more, does not convert a state claim into an action arising under federal law;"² that is, "ordinary" ERISA preemption alone is not complete preemption. *Metropolitan Life*, 481 U.S. 58, 64 (1987) (discussing and distinguishing *Franchise Tax Board*). Even if the Complaint alleged sufficient facts to implicate ERISA, ERISA preemption alone cannot ground removal jurisdiction unless, as discussed below, the cause of action is also within the civil enforcement provisions of ERISA.³

² In *Franchise Tax Board*, the State of California Franchise Tax Board sought a declaratory judgment as to its rights to collect unpaid state income taxes by levying on assets held by an employee welfare benefit plan subject to ERISA. *Franchise Tax Board*, 463 U.S. 1.

³ The complete preemption doctrine is the most common version of the "artful pleading doctrine." Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* 3d § 3722. The Court does not believe the broader "artful pleading doctrine" dictates a different conclusion here. Under this doctrine, which Defendant has not argued, "a plaintiff may not defeat removal by omitting to plead necessary federal questions" and courts will uphold removal if the real nature of the plaintiff's claim is federal, regardless of plaintiff's characterization. *Rivet*, 522 U.S. at 475; *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.2 (citations omitted). Plaintiff has not failed to allege any elements of her claim which would rest on federal law and Plaintiff is not required to anticipate in her Complaint Defendant's argument that the bonuses she is claiming are related to the amount of retirement plan contributions. The plaintiff is the master of the complaint. *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22 (1913).

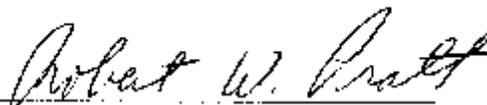
In *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58 (1987), the Supreme Court applied the complete preemption doctrine in an ERISA case, holding that Congress intended to make removable all claims within the scope of the civil enforcement provisions of § 502(a)(1)(B) of ERISA. 29 U.S.C. § 1132(a)(1)(B). However, Plaintiff's action, as set forth in the Complaint, is not a suit "to recover benefits under [a covered plan], to enforce [Plaintiff's] rights under the terms of the plan, or to clarify [Plaintiff's] rights to benefits under the terms of the plan;" it is a dispute over the terms of Plaintiff's employment contract and makes no reference of any kind to a covered plan. This action is therefore not within the scope of § 502(a)(1)(B) and the rule of *Metropolitan Life* does not apply. Because Plaintiff's state action is not completely preempted by § 502(a)(1)(B) of ERISA and does not otherwise raise a federal question or turn on the resolution of a significant federal issue, the Court finds that it lacks subject matter jurisdiction and this action must be remanded to state court.

II. Order

Plaintiff's motion to remand is hereby **granted**. This action is remanded to the Iowa District Court for Scott County, Iowa.

IT IS SO ORDERED.

Dated this ___5th___ day of February, 2003.



ROBERT W. PRATT
U.S. DISTRICT JUDGE