

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DANIEL DONATELLI,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 04-1-P-S
)	
UNUMPROVIDENT CORPORATION,)	
)	
Defendant.)	

**RECOMMENDED DECISION ON UNUMPROVIDENT CORPORATION'S
MOTION FOR SUMMARY JUDGMENT AND
ORDER ON PLAINTIFF'S MOTION TO STRIKE
AND MOTION TO FILE A SUR-REPLY STATEMENT OF FACT**

Daniel Donatelli, a former employee of UnumProvident, alleges that UnumProvident violated his rights under the Maine Whistleblower Protection Act and defamed him in connection with his complaints of illegal claims handling practices within UnumProvident. UnumProvident now moves for summary judgment against both counts. (Docket No. 68.) I recommend that the court **DENY** the motion. Also addressed herein is Donatelli's motion to strike statements from the summary judgment record (Docket No. 87) and his motion for oral argument or for leave to file a sur-reply statement of fact (Docket No. 111).

Facts

UnumProvident is an insurance company that issues and administers short-term and long-term disability policies, among other insurance products. UnumProvident processes claims and is responsible for paying out benefits on qualified claims. (Docket No. 69, ¶ 2.) UnumProvident employed Daniel Donatelli at its Portland, Maine, location

from June 28, 1999, until July 26, 2002. (Id., ¶ 1.) Donatelli worked as a Disability Benefits Specialist in the psychiatric/cardiac unit, in which capacity he not only processed files but also made judgments regarding the disability status of various claimants. (Id., ¶ 3.) Later, Donatelli's title changed to Customer Care Specialist. (Id., ¶ 4.) In July 2001, UnumProvident promoted Donatelli to a Senior Customer Care Specialist position. (Id., ¶ 5.) In February 2002, UnumProvident transferred Donatelli to its Cancer Unit. (Docket No. 69, ¶ 6.) Donatelli resigned his employment with UnumProvident in June or July of 2002 to avoid going through a "performance improvement plan" in the Cancer Unit and being fired, which he believes would have been the inevitable result of such a plan because of concerns he had voiced about the legality of certain UnumProvident claims administration practices. (Id., ¶ 9; Docket No. 85, ¶ 9; Docket No. 86, ¶ 3.) According to Donatelli, whose testimony, although disputed, must be credited at this juncture, his manager told him that he would not survive the performance management program regardless of any attempts that he made or improvement in his numbers. (Docket No. 86, ¶ 3.) In any event, whether Donatelli was constructively discharged in retaliation for whistleblower activities, as Donatelli maintains, is not a question that is generated by UnumProvident's motion. The exclusive ground on which UnumProvident challenges Donatelli's whistleblower claim is that it is preempted by ERISA. Thus, although the parties offer numerous statements of material fact in an effort to describe each and every critique Donatelli had about UnumProvident's claims administration procedures (See Docket No. 69, ¶¶ 10-31; Docket No. 86, ¶¶ 6-14), an exhaustive description of Donatelli's evidence of what he considered to be improper, unethical or even illegal practices is unnecessary. The material issue with respect to the

ERISA preemption question is whether any of Donatelli's alleged whistleblower activity concerned claims administration practices related to non-ERISA plans or policies. My conclusion is that Donatelli generates a genuine issue of material fact on that question based on his evidence concerning UnumProvident's alleged miscoding and prioritizing of claims based on the amount of reserves associated with them and his evidence concerning manipulation of medical review language to support the denial of claims. (Docket No. 86, ¶¶ 12-14.) Donatelli's testimony concerning these practices appears to be based on first hand knowledge. (Pl.'s Suppl. Ans. to Def. Interrogs., Docket No. 70, Elec. Attach. 1, ¶ 8; Aff. of Daniel Donatelli, Docket No. 86, Elec. Attach. 1, ¶¶ 17-18, 23-24.)¹ As for the application of such practices to non-ERISA policies, UnumProvident "admits that the allegations of improper claims handling that Donatelli asserts he reported applied to all

¹ **Plaintiff's Motion for Hearing or to File a Sur-Reply (Docket No. 111).** Donatelli has filed a motion requesting oral argument or, in the alternative, for leave to file a sur-reply to UnumProvident's Local Rule 56 reply statement of material fact. Donatelli is concerned because UnumProvident raised in its reply statement of material fact certain evidentiary objections and the local rule does not permit him to respond to a reply statement of facts. He requests an opportunity to respond to those objections in a sur-reply statement. Based on my review of UnumProvident's reply statement of material facts, the controversy arises from foundation objections raised by UnumProvident with respect to factual statements 8, 9, 10 and 12 of Donatelli's opposing statement. I have found in connection with my recommendation that Donatelli's statements and testimony concerning the alleged use of quotas based on reserves and the alleged manipulation of medical reviews do not suffer from any foundational concerns. Because I do not base my recommendation on any of Donatelli's statements concerning UnumProvident's allegedly misleading sales practices, I make no ruling with respect to UnumProvident's foundation objections concerning these statements. For purposes of this recommended decision on the summary judgment motion, Donatelli's motion for oral argument or for leave to file a sur-reply is **DENIED**. Concerns over the foundation for Donatelli's testimony regarding UnumProvident's sales practices are best addressed in the context of a motion in limine in the event that the court accepts the recommendation regarding count I.

Despite my conclusion that further litigation concerning UnumProvident's foundation objections would not be productive at this time, my impression is that at least one of the allegations of unlawful practices that Donatelli raises does not seem reasonably capable of supporting his whistleblower claim, regardless of whether Donatelli has the requisite knowledge to testify about it. Specifically, Donatelli's statements concerning the advance pay and close practice (Docket No. 86, ¶¶ 6-8) may be outside the boundaries of this litigation because Donatelli failed to assert anywhere (in either of two depositions, in his answers to interrogatories or in his affidavit submitted in conjunction with his opposition to the instant summary judgment motion) that he reported this practice to his supervisors as something he reasonably considered to be illegal or that he ever refused to engage in this practice in the face of a directive to do so. See 26 M.R.S.A. § 833(1)(A) & (D). Indeed, in his summary judgment affidavit, Donatelli merely describes the practice and what he considered to be illegal about it. Parenthetically, Donatelli's testimony regarding this practice also makes it difficult to comprehend how he could have reasonably considered it to be an illegal practice. (See Docket No. 69, ¶ 41 & cited depo. test.)

claims handled by UnumProvident," not just ERISA-regulated plans. (Docket No. 103, ¶ 18.) UnumProvident also admits that "[a]ll UnumProvident policies and contracts for disability insurance are subject to the same claim handling processes and procedures." (Docket No. 86, ¶ 19; Docket No. 103, ¶ 19.) In addition, the record establishes that among the claims Donatelli personally administered were some arising under group policies that were neither sponsored by employers nor covered by the Employee Retirement Income Security Act ("ERISA"). (Docket No. 69, ¶ 8.) And although the majority of the plans administered by UnumProvident are employer-sponsored employee benefit plans regulated by ERISA, UnumProvident also sold and/or administered disability policies for employee-sponsored plans, church plans and government plans, as well as individual disability contracts. (Docket No. 86, ¶ 5.) Thus, if UnumProvident uses quotas and manipulates medical reviews in connection with claims administration, as Donatelli asserts, it is appropriate for the court to infer that it does so across the board.

The facts concerning Donatelli's defamation claim are as follows. A few months after Donatelli ceased working for UnumProvident, David Gelber, an executive producer for CBS News in New York City, contacted him. (Id., ¶ 32.) Mr. Gelber asked Donatelli if he had any experience with "quotas" at UnumProvident. Donatelli responded affirmatively. (Id.) Gelber asked Donatelli if he would be willing to do an interview for a story the television news show "60 Minutes" was planning to run regarding UnumProvident's claims handling practices. (Id., ¶ 33.) Donatelli had two telephone conversations with Gelber. After the first conversation, Donatelli decided he would consult with an attorney regarding whether he would participate. At the time, Donatelli was unrepresented by counsel. (Id., ¶ 34.) In the second conversation, conducted the

next day, Donatelli told Gelber he would not participate in the television show as a guest. (Id., ¶ 35.) Shortly thereafter, Donatelli's videotaped deposition was taken by a California lawyer suing UnumProvident on behalf of a disability benefits claimant Donatelli had never heard of. (Id., ¶ 38.) Two days after the videotaped deposition, Thomas A. H. White, in his capacity as UnumProvident's Vice President of Corporate Relations, sent a letter to Gelber in response to a request from Gelber for a comment regarding Donatelli's allegations. (Id., ¶¶ 36, 37, 42.) White mailed the letter from Chattanooga, Tennessee to Gelber's studio in New York City. (Id., ¶ 48.) It appears that the letter was copied to other individuals within the network as well. (Docket No. 85, ¶ 47, citing Ex. A to White Decl. (a copy of the letter), Docket No. 7, Elec. Attach. A.) White did not know what Donatelli might have said to Gelber, but sought to discredit Donatelli as a source for a *60 Minutes II* broadcast regarding UnumProvident's claims practices. (Docket No. 69, ¶ 49; Docket No. 85, ¶¶ 42, 49; Docket No. 86, ¶ 15.) There is no evidence that any of the letter's content made it into the broadcast.

Donatelli is not aware that anyone read the letter other than himself and Gelber (presumably excluding various attorneys). (Docket No. 69, ¶ 51.) Except for two brief telephone conversations two years ago, Gelber and Donatelli are complete strangers to each other. They are not part of the same social or professional communities. (Id., ¶ 52.) Donatelli claims he was injured by the letter sent by UnumProvident to Mr. Gelber. When asked to explain how the letter could possibly have affected his reputation, all Donatelli could say was that he assumed the letter discredited him in the eyes of Gelber. Even then, Donatelli acknowledged he did not know what Gelber's reaction to the letter was. (Id., ¶ 53.)

Donatelli asserts that the letter contained the following defamatory remarks:

(1) a factual assertion that Donatelli had filed a claim before the Maine Human Rights Commission “in which he seeks substantial damages” (Docket No. 86, ¶ 22);

(2) a statement that Donatelli “believes there may have been quotas to close claims,” when the actual testimony was that Donatelli “knew that there were quotas,” but did not know what the exact numbers were (Id., ¶ 26);

(3) a statement that Donatelli agreed to resign in lieu of being placed on a performance program for several job deficiencies (Id., ¶ 27);

(4) a statement that "When Mr. Donatelli was asked by Plaintiff’s counsel, Mr. Levanson, about what would happen if his team did not meet this figure in a particular month," that his response was "I am not sure that anything would happen" (Id., ¶ 31);

(5) a "suggestion" that Donatelli only testified as to two ways to close claims (Id., ¶ 34); and

(6) a "suggestion" that there is additional undisclosed information "out there" to undermine Donatelli’s credibility (Id., ¶ 43).

Finally, Donatelli complains about the overall tone of the letter, and the fact that it was specifically designed to discredit him as a disgruntled former employee who had performance problems. (Id., ¶ 25.)²

² **Donatelli's Motion to Strike (Docket No. 87).** Donatelli has filed a motion to strike seven of UnumProvident's statements of material fact: paragraphs 36, 37, 39, 40, 41, 44 and 45 of docket number 69. The hearsay objections to statements 36 and 37 are overruled. Having said that, the only use I make of these statements is that they establish the reason why White wrote his letter to Gelber. It is abundantly clear from the record that White wrote to Gelber to address the concern that CBS might use Donatelli as a source in a program critical of UnumProvident's claims practices. To the extent these statements tend to establish White's motivation to write the letter, they are not hearsay, because they are not offered for the truth of the matter asserted. The "citation" and "characterization" objection to statement 39 is sustained. The "citation" objections to statements 40 and 41 are overruled. However, as to these two statements, the material issue in this case is not what, or how many, claims Donatelli "allegedly closed improperly," if any. The objection to statement 44 is overruled. The purpose of statement 44 and the underlying exhibit is to

Discussion

Summary judgment is warranted only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The Court must view the summary judgment facts in the light most favorable to the nonmoving party and credit all favorable inferences that might reasonably be drawn from the facts without resort to speculation. Merchants Ins. Co. v. United States Fid. & Guar. Co., 143 F.3d 5, 7 (1st Cir. 1998). If such facts and inferences could support a favorable verdict for the nonmoving party, then there is a trial-worthy controversy and summary judgment must be denied. ATC Realty, LLC v. Town of Kingston, 303 F.3d 91, 94 (1st Cir. 2002).

I. ERISA Preemption

ERISA’s preemption clause, 29 U.S.C. § 1144(a), provides:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter 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 this title and not exempt under section 1003(b) of this title.”

“The term ‘State law’ includes 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

assist the court in its consideration of the veracity of the comments contained in UnumProvident's letter to Gelber. It is compiled entirely from admissible documents in the record. Having said that, I have not based my evaluation of Donatelli's defamation case on his ability to controvert UnumProvident's statement 44 in his opposition statement (Docket No. 85), but based primarily on the statements and evidence he has put together in his statement of additional material facts (Docket No. 86). The "argumentation" or "improper characterization" objection to statement 45 is sustained. Again, I have looked to Donatelli's underlying deposition testimony, his several factual statements and his memorandum of law in order to evaluate his defamation claim.

Pursuant to 28 U.S.C. § 636(b)(1)(A), my ruling on these evidentiary objections constitutes an order, rather than a recommendation. Accordingly, counsel are advised that any appeal of these evidentiary rulings is governed by Rule 72(a) of the Federal Rules of Civil Procedure, rather than by 28 U.S.C. § 636(b)(1)(B) and Rule 72(b), which separately govern any objection to my recommendation on the summary judgment motion.

language is understood to encompass state law causes of action. McMahon v. DEC, 162 F.3d 28, 36 (1st Cir. 1998). Subsection 1144(b) provides, on the other hand, that “nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.” 29 U.S.C. § 1144(b)(2)(A). In other words, “while the general pre-emption clause broadly pre-empts state law, the saving clause appears broadly to preserve the States’ lawmaking power over much of the same regulation.” Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739-40 (1985).

“ERISA preemption . . . involves two central questions: (1) whether the plan at issue is an ‘employee benefit plan’ and (2) whether the cause of action ‘relates to’ this employee benefit plan.” Id. “The question of whether an ERISA plan exists is a question of fact, to be answered in light of all the surrounding facts and circumstances from the point of view of a reasonable person.” Wickman v. Northwestern Nat’l Ins. Co., 908 F.2d 1077, 1082 (1st Cir. 1990) (citation omitted). “A law ‘relates to’ an employee benefit plan . . . if it has a connection with or reference to such a plan.” Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 98 (1983). “Under this ‘broad common-sense meaning,’ a state law may ‘relate to’ a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect.” Ingersoll-Rand, Co. v. McClendon, 498 U.S. 133, 139 (1990) (quoting Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987)). This “broad common-sense meaning” ostensibly has an outer limit. Shaw, 463 U.S. at 100 n.21 (“Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law ‘relates to’ the plan . . .”). Discerning where this limit falls is one of the most challenging aspects

of ERISA litigation. See De Buono v. NYSA-ILA Med. & Clinical Serv. Fund, 520 U.S. 806, 809 n.1 (1997) (describing an “avalanche of litigation” on this issue).

Where state law causes of action are concerned, binding precedent clearly establishes that ERISA preempts those causes that (1) seek to impose liability for alleged breaches of plan provisions or (2) require the claimant to prove the existence of or terms of a plan in order to prove an element of the cause. See McClendon, 498 U.S. at 139-140 (holding that ERISA preempted common-law cause of action involving allegations of wrongful termination by plan sponsor-employer to avoid paying employee benefits, because the benefit plan at issue was an ERISA-governed plan); McMahon, 162 F.3d at 38-39 (holding that ERISA preempted state law statutory, contract and tort claims premised on the denial of plan benefits but not a contract claim involving the defendant sponsor-employer’s alleged promise to relocate the plaintiff); see also Turner v. Fallon Community Health Plan, 127 F.3d 196, 199 (1st Cir. 1997) (“It would be difficult to think of a state law that ‘relates’ more closely to an employee benefit plan than one that affords remedies for the breach of obligations under that plan.”). Such claims are considered to fall within ERISA’s “exclusive civil enforcement regime.” Hampers v. W.R. Grace & Co., 202 F.3d 44, 50 (1st Cir. 2000).

UnumProvident maintains that Donatelli's state law whistleblower claim falls under the McClendon line of cases because Donatelli's whistleblower claim is based on alleged reports of ERISA violations and therefore "relates to" an employment benefit plan. (Docket No. 68 at 4-9.) Alternatively, UnumProvident argues that Donatelli's whistleblower claim is preempted because relief under the Maine Whistleblower Protection Act would conflict with the enforcement provisions of ERISA, specifically 29

U.S.C. § 1140. (Id. at 10-12.) Donatelli presents four arguments in opposition to these assertions:

- (1) That his whistleblower claim does not relate to any ERISA plan;
- (2) That his whistleblower claim concerns insurance regulation and, therefore, is exempted from ERISA's preemption provision by ERISA's savings clause;
- (3) That he "complained about insurance contracts that do not fall under the ERISA umbrella defined in 29 U.S.C. § 1003"; and
- (4) That his whistleblower claim does not conflict with ERISA's remedial scheme.

(Docket No. 84 at 1-2.) Donatelli's amended complaint (Docket No. 17) does not allege any violations of ERISA fiduciary duties by UnumProvident. Instead, Donatelli alleges that he was pressured "to participate in business practices that were unethical and violated legal rules for disability insurance providers."

A. *Express preemption.*

Donatelli does not contest that some of the complaints he raised with UnumProvident about its alleged business practices would amount to violations of fiduciary duties imposed on UnumProvident by ERISA. However, he asserts that the whistleblower activity he alleges related, generically, to UnumProvident's administration of all disability plans and policies, including but not limited to ERISA plans, and to illegal marketing measures employed by UnumProvident with respect to its ERISA plans. With respect to the latter, Donatelli alleges "pre-plan and/or pre-enrollment activities" involving misrepresentation of benefits to induce "the sale of policies to airline/airplane pilots and truck drivers." (Docket No. 84 at 4.) In addition, Donatelli asserts that he complained about "phony 'round table' discussions to put on a show for potential

customers that were receiving guided tours of the UnumProvident building" in order to induce the sale of policies by misleading potential insured into thinking that every claim would be handled through round table discussions involving "'objective' discussions with regard to each claim." (Id. at 5.) According to Donatelli, he reasonably believed that such practices are prohibited pursuant to Maine insurance law, citing Sections 2152, 2153 and 2154 of the Maine Revised Statutes, Title 24-A. (Id. at 5.) Donatelli raises these matters because courts have held that ERISA does not preempt claims related to fraud or misrepresentation to induce participation in an ERISA-regulated plan. See, e.g., Stetson v. P.F.L. Ins. Co., 16 F. Supp. 2d 28, 31-33 (D. Me. 1998) (involving a claim against an insurance agency and an insurer, "none of whom was, at the time of the alleged misrepresentations nor at the time of the suit, an ERISA entity"). While I agree with Donatelli that his whistleblower claim would not be preempted to the extent it is premised on reports concerning such activities, the existing record raises a legitimate concern over what knowledge Donatelli had about UnumProvident's sales practices and whether his recent testimony about reporting such practices is an inappropriate re-characterization of prior testimony designed to address the exigencies of the pending summary judgment motion. See, supra, note 1. Thus, I have focused my recommendation on Donatelli's allegations regarding the alleged practices of miscoding claims, prioritizing claims based on reserve value, pressuring personnel to close claims illegitimately or prematurely, and manipulating medical reviews. These practices, if true, applied equally to UnumProvident's administration of ERISA plans and non-ERISA plans and insurance policies.

Ultimately, “[t]he question whether a certain state action is pre-empted by federal law is one of congressional intent.” McClendon, 498 U.S. at 137-38. The purpose of ERISA’s preemption provision is to “protect . . . the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies.” 29 U.S.C. § 1001(b). Accomplishment of this objective “requires the avoidance of ‘a multiplicity of regulation’ and, concomitantly, the creation of a climate that ‘permits the nationally uniform administration of employee benefit plans.’” Carpenters Local Union No. 26 v. United States Fid. & Guar. Co., 215 F.3d 136, 140 (1st Cir. 2000) (quoting New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 656 (1995)). The seemingly obvious answer to the question of whether Congress intended to foreclose Donatelli's whistleblower claim, to the extent that it concerns UnumProvident's legal obligations related to non-ERISA plans and policies,³ is that this aspect of the claim cannot be preempted because it does not “relate to” an ERISA plan; that is, there is no particular ERISA plan in “existence” that Donatelli's claim relates to and the claim does not seek to impose liability for breaching the specific provisions of any plan or obligation otherwise imposed by ERISA. Furthermore, it is certainly a difficult proposition to maintain that Congress intended ERISA to preempt a state-law whistleblower claim to the extent it relies on underlying violations of state law with respect to non-ERISA benefit plans or policies. Moreover, ERISA has nothing to do with the regulation of large insurance companies' internal employment practices, as opposed to its fiduciary obligations to plans and their

³ It is unclear how this aspect of Donatelli's case will be developed in the evidentiary context of a trial.

participants. Finally, what is to be made of Congress's use of the language "insofar as" in Section 1144(a)? "[T]he provisions of this subchapter and subchapter III of this chapter 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 this title." 29 U.S.C. § 1144(a). In effect, UnumProvident's argument is simply that ERISA preemption ought to extend to Donatelli's unrelated claims because Section 1144(a) has been described as "expansive." (Docket No. 101 at 5.) UnumProvident's argument would render meaningless the language "insofar as" and would extend ERISA beyond its logical limits.⁴

Since McClelland, the First Circuit has had several opportunities to apply ERISA preemption, albeit in the context of claims by beneficiaries. In Vartanian v. Monsanto Co., 14 F.3d 697 (1st Cir. 1994), the court construed McClelland as holding that ERISA preempts the following two kinds of state causes of action: (1) "where a plaintiff, in order to prevail, must plead, and the court must find, that an ERISA plan exists"; and (2) where there is no express preemption, but the cause of action "conflicts directly with an ERISA cause of action." Id. at 700. Subsequently, the court held in Carlo v. Reed Rolled Thread Die Company, 49 F.3d 790 (1st Cir. 1995), that proof of an ERISA plan was necessary where the plaintiff's damages could only be measured by reference to an ERISA plan. Id. at 793-794. In this case, whether Donatelli can prevail does not turn on a finding that an ERISA plan exists. Furthermore, Donatelli's damages have no relation to the terms of any plan. As an allegedly, constructively discharged employee of UnumProvident, Donatelli is not in the same position as someone seeking to recover benefits under a plan

⁴ To his credit, Donatelli does not contend that his whistleblower claim would not be preempted if all of the underlying, allegedly improper practices pertained, exclusively, to UnumProvident's administration of ERISA plans. The point is that the alleged quota and medical review practices, if true, apply equally to all disability plans and policies administered by UnumProvident.

administered by UnumProvident. Donatelli's whistleblower claim relates to ERISA only insofar as the unlawful practices alleged might be used by UnumProvident with all of the claims that it administers, ERISA and non-ERISA alike. I conclude that because the whistleblower activity Donatelli allegedly engaged in concerns generic claims administration practices that apply with equal force to ERISA and non-ERISA claims alike, his state law whistleblower claim is not preempted insofar as those practices concern non-ERISA plans or policies. With respect to such plans and policies, Donatelli's claim presents the sort of run-of-the-mill state-law tort claim that may be pursued against an ERISA fiduciary the same as against any other employer.⁵ *Id.* at 833.

B. "Conflict" preemption or "exclusive remedy" preemption.

The parties have separately briefed the question of whether Donatelli's state whistleblower claim is barred because an exclusive remedy is afforded by ERISA. I am not convinced that the potential availability of a separate cause of action under ERISA can somehow preclude the maintenance of Donatelli's whistleblower claim if, as I have suggested, that claim does not "relate to" an ERISA plan. Rather, my impression is that conflict preemption of the kind discussed by UnumProvident actually concerns the question of whether Donatelli's claim should be recast as an ERISA claim, assuming Donatelli would have standing to pursue such a claim. *See, e.g., King v. Marriott Int'l, Inc.*, 337 F.3d 421, 425 (4th Cir. 2003) (discussing the difference between ordinary preemption and the doctrine of "complete preemption"). In any event, as for the conflict between Donatelli's whistleblower claim and ERISA's remedial provisions, UnumProvident cites *Hashimoto v. Bank of Hawaii*, 999 F.2d 408 (9th Cir. 1993),

⁵ I recognize that acceptance of this recommendation would leave the court with a rather amorphous whistleblower claim, but, on the other hand, UnumProvident chose not to brief the underlying merits, moving for summary judgment on the whistleblower claim exclusively on the basis of ERISA preemption.

Anderson v. Electronic Data Systems Corporation, 11 F.3d 1311 (5th Cir. 1994), cert. denied, 513 U.S. 808 (1994), and McSharry v. UnumProvident Corporation, 237 F. Supp. 2d 875 (E.D. Tenn. 2002). Like this case, all three involved plaintiffs in positions similar to Donatelli. All three involved former employees of an entity having ERISA fiduciary responsibilities who claimed to be discharged because of their refusal to carry out certain procedures or directives. Unlike this case, Hashimoto and McSharry involved allegations that the employer had discharged the plaintiff employee for blowing the whistle regarding the employer's administration of ERISA plans exclusively. Hashimoto, 999 F.2d at 409-10; McSharry, 237 F. Supp. 2d at 876. The Hashimoto court, in particular, emphasized this point in its holding that the claim was preempted, stating "we hold the Hawaii Whistle Blower's Act, *to the extent an ERISA violation is involved*, preempted." 999 F.2d at 412 (emphasis added). The holding in all three cases also turned largely on a finding that ERISA Section 1140 affords a whistleblower cause of action to the employees of ERISA fiduciaries. I consider that contention to be rather dubious. ERISA Section 1140 reads, in pertinent part, as follows:

§ 1140. Interference with protected rights

It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. The provisions of section 502 [29 USCS § 1132] shall be applicable in the enforcement of this section.

The Hashimoto, Anderson and McSharry courts all held that Section 1140 affords the exclusive remedy to a former employee of an ERISA fiduciary when the employee seeks whistleblower protection based on allegations of ERISA violations. Hashimoto, 999 F.2d at 411 ("This statute is clearly meant to protect whistle blowers."); Anderson,

11 F.3d at 1315 ("ERISA § [1140] broadly prohibits . . . the discharge or other adverse treatment of any person because he has given information or testimony relating to ERISA."); McSharry, 237 F. Supp. 2d at 882 (same, relying on Hashimoto). I think that the courts' treatment of Section 1140 as affording a whistleblower remedy is erroneous. As the Fourth Circuit has observed, this construction of Section 1140 ignores important qualifying language in the provision. King, 337 F.3d at 428 (criticizing both Anderson and Hashimoto because "[w]e simply do not agree that the language of section 510 [1140] can be 'fairly construed' to extend to [intra-office reports in a whistleblower context].") The relevant language of Section 1140 is that the giving of information or testimony must relate to an inquiry or proceeding: "It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify *in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act.*" 29 U.S.C. § 1140 (emphasis added). As the King court observed, unless a whistleblower plaintiff's complaint alleges that he or she testified, was about to testify, or gave information in connection with "inquiries or proceedings," which are most logically limited to legal or administrative proceedings, "or at least to something more formal than written or oral complaints made to a supervisor," section 1140 has no applicability. King, 337 F.3d at 427 (observing also that Section 1140 has much narrower anti-retaliation language than is found in the equivalent anti-retaliation provision of Title VII and citing Ball v. Memphis Bar-B-Q Co., 228 F.3d 360, 364 (4th Cir. 2000), to that effect). I find the King court's construction of Section 1140 much more compelling than that espoused in the Fifth and Ninth Circuits. In the language of the King court, I "do [not] think that we would be free

to reject the most compelling interpretation of the statutory language for a 'fair' interpretation, even if we preferred as a matter of policy the result yielded by the broader interpretation." Id. at 428. See also Carpenters Local Union No. 26, 215 F.3d at 139-40 ("[U]nless congressional intent to preempt clearly appears, ERISA will not be deemed to supplant state law in areas traditionally regulated by the states.").

UnumProvident cites the Fifth Circuit's Anderson opinion for another proposition that I consider to take the doctrine of ERISA preemption beyond its reasonable limits. (Docket No. 101 at 2.) According to the Anderson court, it is insignificant that a whistleblower plaintiff alleges whistleblower activity unrelated to an ERISA plan, so long as it also alleges whistleblower activity related to an ERISA plan or to the employer's adherence to ERISA's fiduciary duties. 11 F.3d at 1315-16.⁶ The court concluded that any such alternative bases for the plaintiff's wrongful termination claim did "not alter the analysis" because "[t]o hold otherwise . . . would fail to recognize that the ERISA preemption provision is deliberately expansive and is to be construed extremely broadly." Id. at 1315-16 (internal quotation marks omitted). This analysis is less than satisfying because under its logic, a state law whistleblower claim by an employee of an ERISA fiduciary would be completely foreclosed so long as the

⁶ In addition to Anderson, UnumProvident cites three other cases, all of which have even less discussion of the issue than Anderson and two of which clearly involve only the administration of an ERISA plan or the management of ERISA plan funds. (Docket No. 68 at 8 nn. 4 & 5; Docket No. 103 at 2.) See Levy v. Chandler, 287 F. Supp. 2d 831, 835 & n.2 (E.D. Tenn. 2003) ("If there were no ERISA violations, there was no duty to halt or disclose anything and, therefore, no state law fiduciary violations. Thus, the violation of ERISA fiduciary duties is an essential element to Plaintiffs' claims."); Peterson v. Spaich Farms, Inc., 1999 WL 793942, 1999 U.S. Dist. LEXIS 22545 (E.D. Cal. Sept. 29, 1999) (concerning in-house accountant's claim for wrongful discharge against employer based on allegation that he was terminated for refusing to ignore employer's transfer of ERISA plan assets into its corporate general fund); Andrews v. Alaska Operating Engineers-Employers Training Trust Fund, 871 P.2d 1142 (Alaska 1994) (concerning "a dispute between the fiduciaries of an employee welfare benefit plan governed by the Employee Retirement Income Security Act"). I do not consider these cases to be helpful in considering the question posed.

defendant could establish that the plaintiff's intra-office whistleblower activity involved even a singular ERISA concern. It is a hard notion to accept that Congress intended large insurance companies like UnumProvident to be completely shielded from review of any of their internal claims administration practices simply because they happen to administer ERISA plans along with other plans, particularly where the purpose of ERISA was not to afford defenses to ERISA fiduciaries against state law litigation not involving plans regulated by ERISA. The test is not whether a lawsuit generally involves or affects an ERISA fiduciary, but whether a specific claim relates to an ERISA plan. Mackey v. Lanier Collection Agency & Serv., 486 U.S. 825, 832-33 (1988). Donatelli's whistleblower claim does not relate to an ERISA plan because it is premised on practices that are, allegedly, applied to all claims (including insurance claims and non-ERISA plan claims) that are administered by UnumProvident.

B. Savings clause

In addition to arguing that a portion of his whistleblower claim does not relate to ERISA, Donatelli argues that this same portion of his claim would, in any event, be saved from ERISA preemption under Section 1144(b)(2)(A) because his underlying whistleblower activity concerns Maine laws regulating insurance. Despite my prior recommendation, I address this issue in the event that it might afford an alternative basis for holding that Donatelli's whistleblower claim survives preemption insofar as it is premised on alleged violations of state law. I conclude that it does not. Donatelli likens his whistleblower claim to a state law claim asserting bad faith breach of an insurance contract or an unfair insurance practice claim. He contends that his whistleblower claim implicates Maine insurance law because he was blowing the whistle with respect to what

he reasonably considered to be violations of Maine insurance law. (Docket No. 84 at 10-11, citing 24-A M.R.S.A. § 2164-D). UnumProvident, on the other hand, says that the court must look exclusively at the statutory whistleblower cause of action and whether it regulates insurance, not at the underlying statutes that might be raised by a whistleblower plaintiff. (Docket No. 101 at 5-6.) The law favors UnumProvident on this issue. The Maine Whistleblower Statute has general applicability to every law that an employer might conceivably call upon an employee to violate. Such an open-ended remedial statute is not designed exclusively to regulate insurance. See Hotz v. Blue Cross & Blue Shield of Mass., 292 F.3d 57, 60-61 (1st Cir. 2002) (holding that a private action for damages and fees, although premised substantively on the alleged violation of a statutory provision directed solely at the insurance industry, is not one that regulates insurance where the statutory provision that provides the right to sue has general applicability to a host of unfair or deceptive practices and may be asserted against any industry, not just the insurance industry.)

II. Defamation

UnumProvident argues that summary judgment should enter against Donatelli's defamation claim because (1) there is no injury to Donatelli; (2) the statements in White's letter were true; (3) the statements related opinion rather than fact; and/or (4) the statements were privileged. (Docket No. 68 at 13-20.)⁷ The elements of a defamation claim are:

⁷ The parties have raised a choice of law puzzle for the court to consider. According to UnumProvident, New York law controls the defamation claim. According to Donatelli, Maine law does. The solution to the puzzle is not obvious because although the letter was never published in Maine, the parties' relationship is entirely Maine based. See Restatement (Second) of Conflicts of Laws, §§ 6, 149. Both parties have indicated that the court's choice of either Maine or New York law will not impact the resolution of this suit. (Docket No. 68 at 13; Docket No. 84 at 17.) Both parties have also relied primarily

- (a) a false and defamatory statement concerning another;
- (b) an unprivileged publication to a third party;
- (c) fault amounting at least to negligence on the part of the publisher; and
- (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Cole v. Chandler, 2000 ME 104, ¶ 5, 752 A.2d 1189, 1193. UnumProvident's motion calls into question elements (a), (b) and (d). I conclude that because some of the statements in White's letter do have a defamatory flavor, summary judgment should not enter against Donatelli's defamation claim. These statements are per se actionable, and even though the statements were made in a privileged context, the fact finder would have to determine if the privilege was abused.

- A. *Statements pertaining to Donatelli's work performance and his motivations constitute, at least, "implied" defamation.*

"Whether a statement is capable of bearing a defamatory meaning is a question of law." Schoff v. York County, 2000 ME 205, ¶ 8, 761 A.2d 869, 871 n.2. The tort of defamation concerns injury to reputation, not mere insult. York Golf & Tennis Club v. Tudor Ins. Co., 2004 ME 52, ¶ 17, 845 A.2d 1173, 1177. Thus, "[a] communication is defamatory 'if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.'" Schoff, 2000 ME 205, ¶ 9, 761 A.2d at 871 n.3 (quoting Restatement (Second) of Torts § 559 (1977)). "In determining whether a statement is defamatory, the statement must be interpreted in its context, which includes the entire publication and all extrinsic circumstances known to the recipient." Id.

on Restatement principles in arguing their positions. I have cited Maine law and the Restatement for the sake of simplicity.

In UnumProvident's letter to Gelber, UnumProvident first indicated that the letter was meant to address Gelber's assertion that Donatelli indicated to Gelber that UnumProvident pressured Donatelli to meet quotas to deny claims. Over the next three pages, UnumProvident described Donatelli's testimony during a recent deposition and argued that Donatelli's testimony undermines the contention that Donatelli ever improperly denied any claim based on a quota. In closing, UnumProvident attributed bias or animus on the part of Donatelli toward UnumProvident, describing Donatelli as "disgruntled due to performance criticisms or adverse employment actions" and as someone "who resigned rather than face management of his performance problems and who is now pursuing the Company before an administrative agency." Finally, UnumProvident indicated that if Donatelli's deposition were resumed, "other issues" would arise "that bear on Mr. Donatelli's credibility." The statements thus fall into two categories. In the first category are those statements characterizing Donatelli's testimony during his October 18, 2002, deposition. In the second category are those statements characterizing Donatelli. The statements in the former category are not defamatory because they have no tendency to attribute any misdeeds to Donatelli or any personal characteristics that would subject Donatelli to contempt or ridicule by Gelber, members of the CBS staff, or any other potential recipients of these statements. With respect to these statements, the letter presented nothing more than argument based on an established record (the deposition testimony) in an adversarial context. The statements may reflect "spin"⁸ or something other than the "whole truth," but each of the points UnumProvident made about Donatelli's testimony finds some support in Donatelli's testimony. Certainly

⁸ The issue of spinning Donatelli's deposition testimony is exactly right: UnumProvident was not maligning Donatelli with this statement, but offering a (perhaps slanted) interpretation of the testimony in order to dissuade Gelber from incorporating it into the news program.

any newsperson would know, in this context, to look to the ultimate source (the deposition) for his or her own read. Because these statements are not defamatory,⁹ they cannot support the defamation claim.

Unlike the statements in the first category, the statements in the second category have something of a defamatory flavor. However, the statement that Donatelli resigned in lieu of going through a performance management program has an air of truth to it, too, as does the statement that Donatelli was pursuing UnumProvident before an administrative agency.¹⁰ Furthermore, the record establishes that Donatelli did have some alleged deficiencies in his job performance. Among other things, in his deposition testimony Donatelli acknowledged that since January 2001 there were repeated comments by his supervisors that his files were backlogged and he was behind in his work. (Docket No. 22, Elec. Attach. 3, at 221.) Generally, "there is no liability for a true statement." Schoff, 2000 ME 205, ¶ 10, 761 A.2d at 871. Despite these obstacles, Donatelli maintains that his defamation claim is actionable because, when the totality of the letter is considered, it implies dishonesty and incompetence. (Docket No. 84 at 24.) I agree with Donatelli. The letter not only characterizes Donatelli as a liar, but also disparages his competency in his occupation. Even if the fact finder should credit that Donatelli had some performance problems, it might also conclude that these problems were not sufficiently serious to have justified the performance management program

⁹ Regarding the statements in this category, UnumProvident actually asserted that Donatelli did nothing contrary to law or otherwise inappropriate.

¹⁰ Donatelli asserts that it was false and misleading for UnumProvident to assert that he was seeking substantial damages in connection with his claim before the Maine Human Rights Commission because a claimant cannot recover damages from the Commission. (Docket No. 84 at 19.) This argument is not productive. Donatelli's activity before the Commission was not required to commence this litigation, but was a prerequisite to recovering damages in the instant litigation. See 5 M.R.S.A. § 4622. Moreover, Donatelli testified during his deposition that he was seeking damages in connection with his claim before the Commission. (Docket No. 22, Elec. Attach. 1, at 88-89.) Thus, the statement suffers from a technical inaccuracy, but is substantively true.

UnumProvident sought to put Donatelli in and agree with Donatelli that the measure was undertaken in retaliation for whistleblower activity, as Donatelli maintains. Cf. Schoff, ¶¶ 10-11, 761 A.2d at 871-72 (discussing claims coming "under the rubric of implied defamation" and observing that "[a]lthough it is generally accepted that there is no liability for a true statement, we have allowed true but incomplete statements to fulfill the falsity requirement").

UnumProvident argues, alternatively, that the statements are not actionable because they relate opinion rather than fact. (Docket No. 68 at 16-17.) Although the letter may include statements of opinion as to why Donatelli is alleging that UnumProvident engaged in inappropriate practices, it also clearly implies the existence of undisclosed defamatory facts pertaining to both his competence in his work and his credibility. UnumProvident not only implied that Donatelli's work performance deserved performance management, but also that further facts would come out in subsequent questioning under oath that would bear on Donatelli's credibility. Such statements are actionable. Ripsett v. Bemis, 672 A.2d 82, 86 (Me. 1996) ("A statement may be actionable if it implies the existence of undisclosed defamatory facts.") "Moreover, if the statement could reasonably be understood by the ordinary person as implying undisclosed defamatory facts, the question of whether it is a statement of fact or an opinion will be submitted to the jury." Staples v. Bangor Hydro-Elec. Co., 629 A.2d 601, 603 (Me. 1993) (quoting True v. Ladner, 513 A.2d 257, 262 (Me. 1986) and citing Restatement (Second) of Torts § 566 cmt. c.).

B. *There is no evidence of actual injury or special damages, but the "statements" in the letter are per se actionable.*

Donatelli has failed to produce any evidence of an injury to his reputation. Indeed, Donatelli has failed to produce any evidence that the allegedly defamatory statements were ever published within his community. Donatelli maintains that it does not matter that the contents of White's letter were never communicated to any person or prospective employer in the relevant community because the statements contained in the letter were actionable per se due to their tendency to injure him in his trade, business or profession. (Docket No. 84 at 23-24.) Thus, he asserts, "given that [his] is a profession requiring a fiduciary duty of honesty, . . . claims that [Donatelli] is not credible . . . tend to injure him in his trade, business or profession. At minimum, when considering the circumstances surrounding this claim, the words adversely reflect on Donatelli's occupation." (*Id.* at 24.) The common law provides that words that injure one in his or her business or occupation are actionable per se, without proof of actual reputational injury within the plaintiff's relevant community or other special damages. Saunders v. VanPelt, 497 A.2d 1121, 1124-25 (Me. 1985) ("Words falsely spoken are slanderous per se if they relate to a profession, occupation or official station in which the plaintiff is employed.") Donatelli's argument that the letter injures him in regard to pursuing a job involving fiduciary duties may have merit. The main point of the letter is to argue that Donatelli is attacking UnumProvident because he is disgruntled over adverse employment measures. But although the letter asserts that Donatelli never breached any fiduciary duties while he was employed at UnumProvident, it also implies that he has been untruthful regarding UnumProvident's policies and practices. As to the issue of his competency, the letter does not directly assert that Donatelli is incompetent, but that he

received "performance criticisms" and had "performance problems" that warranted "performance management," implying his incompetence. Under the circumstances of this case, I conclude that Donatelli's claim falls under the "actionable per se" rubric and that the absence of evidence concerning actual damage to Donatelli's reputation does not warrant the entry of summary judgment against this claim.

C. The statements in the letter are conditionally privileged, but there is a question of fact whether the privilege was abused.

UnumProvident argues that the statements in its letter to Gelber were all conditionally privileged because "the letter was sent to protect UnumProvident's legitimate business interests." (Docket No. 68 at 19.) Donatelli responds that the statements were not privileged because UnumProvident's interest in protecting its business reputation is not sufficiently important and that, in any event, the privilege was abused based on unnecessary or unreasonable publication "outside the normal channels." (Docket No. 84 at 24-26.)

"A conditional privilege against liability for defamation arises in settings where society has an interest in promoting free, but not absolutely unfettered, speech." Lester v. Powers, 596 A.2d 65, 69 (Me. 1991). Whether such an interest should be recognized is a question of law. Rice v. Alley, 2002 ME 43, ¶ 21, 791 A.2d 932, 936. Whether a conditional privilege has been abused is a question of fact. Cole, 2000 ME 104, ¶¶ 7, 752 A.2d at 1194. When such an interest is recognized, summary judgment should enter against a defamation claim unless the plaintiff can generate as a genuine issue whether the defendant abused the privilege. Id., ¶¶ 7-8 (affirming entry of summary judgment against former employee's defamation claim based on application of a conditional privilege). "Abuse includes making the statement outside normal channels or with

malicious intent. For purposes of defamation claims, malice means when the originator of the statement knows her statement to be false, recklessly disregards its truth or falsity, or acts with spite or ill will." Id., ¶ 6.

A conditional privilege may arise based on an interest held by the publisher of defamatory speech. Lester, 596 A.2d at 70; Restatement (Second) of Torts, §§ 594, 595. To determine whether a conditional privilege exists, courts "use[] a weighing approach based on the totality of the circumstances, in view of the interests of the publisher and the recipient." Lester, 596 A.2d at 69 (citing Restatement (Second) of Torts, §§ 594-598). As UnumProvident contends, its interest in protecting its business reputation from an unfavorable news broadcast is a sufficient interest to generate a privilege for defamatory speech. See Restatement (Second) of Torts § 594, cmt. f. ("Any lawful pecuniary interest of the publisher . . . comes within [the rule]."). According to UnumProvident, the circumstances of this case fall directly under comment k of the Restatement, which reads:

k. Defense against defamation. A conditional privilege exists under the rule stated in this Section when the person making the publication reasonably believes that his interest in his own reputation has been unlawfully invaded by another person and that the defamatory matter that he publishes about the other is reasonably necessary to defend himself. The privilege here is analogous to that of self-defense against battery, assault or false imprisonment, covered in §§ 63 to 75. Thus the defendant may publish in an appropriate manner anything that he reasonably believes to be necessary to defend his own reputation against the defamation of another, including the statement that his accuser is an unmitigated liar.

Clearly, the authors of the Restatement believe that relatively harsh defamatory statements may be offered in defense of one's own reputation. Applying the balancing test to the circumstances of this case, I conclude that a conditional privilege would apply to the statements contained in UnumProvident's letter. UnumProvident made the statements to Gelber in response to information from Gelber that Donatelli had informed

Gelber of UnumProvident's alleged use of quotas in connection with claims administration. The letter was a measured response to this circumstance to the extent that it attempted to parse Donatelli's deposition testimony and explain away the charges leveled at UnumProvident. In the context of an investigative report by a major media outlet, UnumProvident had reason to believe that CBS would not broadcast its statements about Donatelli unless it also broadcasted Donatelli's statements about UnumProvident, including statements in reply to UnumProvident's statements. See Restatement (Second) of Torts § 594 cmt. e. In the event that UnumProvident's statements were true, it would be unfair to deny UnumProvident the privilege to respond in a circumstance such as this, particularly where Donatelli's claim of defamation boils down to one of "implied defamation." Viewing the totality of the circumstances, writing a letter to Gelber about Donatelli's deposition testimony was a measured response to serious allegations concerning its business practices. If successful, the letter would dissuade CBS from using Donatelli in its broadcast. However, a fact finder might well conclude that UnumProvident went too far by implying Donatelli was lying to support a claim before the Maine Human Rights Commission, was merely disgruntled over what UnumProvident implied was a deserved adverse employment action, and was dishonest for these and other, undisclosed, reasons. Accordingly, I recommend that the Court deny UnumProvident's motion for summary judgment with regard to Donatelli's defamation claim.

III. Punitive Damages.

Donatelli's amended complaint (Docket No. 17) recites as "Count V" a claim for punitive damages. As UnumProvident observes, "punitive damages" is not a separate cause of action, but a claim for damages. (Docket No. 68 at 21.) The only argument UnumProvident offers for dismissing Donatelli's claim for punitive damages is that it is dependent on counts I and II. (Id.) Because I have recommended that the court not enter summary judgment against Donatelli's whistleblower and defamation claims, I further recommend that it not dismiss Donatelli's plea for punitive damages.

Conclusion

For the reasons set forth herein, I **GRANT**, in part, Donatelli's motion to strike (Docket No. 87), **DENY** Donatelli's motion for hearing or leave to file a sur-reply (Docket No. 111), and **RECOMMEND** that the court **DENY** UnumProvident's motion for summary judgment (Docket No. 68).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Dated: December 22, 2004

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

**U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 2:04-cv-00001-GZS
Internal Use Only**

DONATELLI v. UNUMPROVIDENT
CORPORATION et al
Assigned to: JUDGE GEORGE Z. SINGAL
Case in other court: Cumberland County Superior,
CV-03-00529
Cause: 29:1001 E.R.I.S.A.: Employee Retirement

Date Filed: 01/02/2004
Jury Demand: Plaintiff
Nature of Suit: 791 Labor:
E.R.I.S.A.
Jurisdiction: Federal Question

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