

Tenet Hospitals Ltd. v. Texas Health Choice, L.C., Not Reported in F.Supp.2d (2003)

2003 WL 22251420

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Only the Westlaw citation is currently available.

United States District Court,
N.D. Texas, Dallas Division.

TENET HOSPITALS LTD., et al., Plaintiffs,

v.

TEXAS HEALTH CHOICE, L.C., Defendant.

No. Civ.A.3:02-CV-1940-N.

I
Jan. 10, 2003.

ORDER OF DISMISSAL

GODBEY, J.

*1 Before the Court are Plaintiffs' (collectively, "Tenet") motion to remand and Defendant Texas Health Choice, L.C.'s ("THC") motion to dismiss. Tenet contracted with THC to provide health care to individuals with coverage from THC pursuant to Medicare+Choice, 42 U.S.C. §§ 1395, *et seq.*, and the Federal Employee Health Benefits Program, 5 U.S.C. §§ 8901-14 ("FEHBA"). Tenet sued THC in Texas state district court for sums allegedly due under the contract as a common law breach of contract case. THC removed to this Court, on the basis that the claim was really one for benefits and

federal jurisdiction arises under the cited statutes, and moved to dismiss for failure to exhaust administrative remedies as required under statutes. Tenet has moved to remand to state court.¹

Tenet argues that THC waived its right to remove because the agreements between THC and Tenet provide they would be "governed by the State of Texas." That language appears to be more like a choice of law provision, but in any event does not rise to the level of a valid waiver of federal jurisdiction. *Waters v. Browning-Ferris Industries, Inc.*, 252 F.3d 796, 797 (5th Cir.2001). Tenet's motion to remand the Medicare+Choice claims is denied and THC's motion to dismiss those claims is granted for the reasons stated in *Lifecare Hospitals, Inc. v. Ochsner Health Plan, Inc.*, 139 F.Supp.2d 768 (W.D.La.2001). Likewise, Tenet's motion to remand the FEHBA claims is denied. *Botsford v. Blue Cross and Blue Shield of Montana, Inc.*, 2002 WL 31856602 (9th Cir. Dec. 23, 2002). THC's motion to dismiss those claims is granted. *See* 5 C.F.R. § 890.105(a)(1).

It is, therefore, ORDERED that this action is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 12(h)(3).

All Citations

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Footnotes

1 The briefing of the two motions is quite good on both sides.

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