

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Bish, et al. :
v. : No. 3:03cv1118 (JBA)
Aquarion Services Co., et al. :

**Ruling on Defendants Aquarion's and US Filter's Motions to
Dismiss [Docs. ##29, 31]**

Plaintiffs commenced this suit to reinstate their retirement medical insurance coverage that was terminated after the transfer of administration of the Bridgeport Water Pollution Control Authority's waste water treatment facilities, where they had been formerly employed. Defendants Aquarion Services Company, Aquarion Company, and Aquarion Water Company (collectively "Aquarion") moved to dismiss all counts of Plaintiffs' Amended Complaints that were directed at Aquarion. Defendant US Filter Operating Services, Inc. ("US Filter") moved under Fed. R. Civ. P. 12(b)(1) and (6) to dismiss Counts Five, Eleven, Twelve and Fifteen of Plaintiffs' Amended Complaint. For the reasons discussed below, Aquarion's motion is denied. US Filter's motion is granted as to Count Five and denied as to Counts Eleven, Twelve and Fifteen.

I. Background¹

Plaintiffs Alexander Bish and Richard Faustine, and Intervening Plaintiff Donald Mohyde, are retired employees of the Bridgeport Water Pollution Control Authority ("WPCA"). Plaintiff Local 1303 of Council 4, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 1303") is the union representing Bish, Faustine and other WPCA employees.

Intervening Plaintiff International Brotherhood of Teamsters Local 145 ("Local 145") is the union representing Mohyde and certain other employees of the WPCA. Plaintiffs claim entitlement to retirement medical benefits, which they were refused after Aquarion replaced US Filter as the private entity operating the WPCA's waste water treatment facilities.

On April 28, 1997, Defendant City of Bridgeport ("Bridgeport") entered into a contract with a private company, Professional Services Groups, Inc. ("PSG"), to operate the WPCA's waste water treatment site. Prior to the privatization of management of the water treatment facilities, Bridgeport Mayor Joseph P. Ganin stated in a letter to WPCA employees that all city waste water treatment employees would be offered jobs by PSG, would be provided with an equal or better wage and benefit

¹The following facts are based on plaintiffs' amended complaint, and, where noted, intervening plaintiffs' amended complaints. For the purposes of the motions to dismiss, these facts are accepted as true. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

package, and would, as employees of PSG, be allowed to participate in the state-managed retirement fund with no disruption in pension plans.

Upon formally entering into the privatization contract on April 28, 1997, PSG accepted the terms of Mayor Ganin's letter to WPCA employees, recognized the unions, and entered into collective bargaining agreements with Local 1303 ("Local 1303 CBA"), and with Local 145 ("Local 145 CBA"). Both collective bargaining agreements were to remain in effect for five years from the date of execution and were thereafter to be automatically renewed absent notice from one of the parties.

US Filter subsequently purchased PSG and agreed to adopt the CBA. When plaintiffs Bish and Faustine retired, they were covered by the Local 1303 CBA and were provided with retiree medical benefits by U.S. Filter pursuant to Section 29-3 of the CBA, which states:

For those employees who have completed fifteen (15) years of service and are fifty-five (55) years of age, or have completed twenty-five (25) years of service regardless of their age, and who will retire during the term of this agreement or an employee over the age of sixty-five (65) but not eligible for Medicare and who will retire during the term of this [a]greement, PSG shall provide and pay for the Insurance coverages as described in Section 29-1(a), (b), (c), and (d) for each retiree and his enrolled dependents.

- A) PSG may offer a point-of-service plan option that enables employees to receive improved benefits and administration through a network of participating providers.
- B) There shall be a retiree contribution equal to five (5%) percent of the cost of the

difference between the employee and the dependent(s) premium.

Mohyde, who was covered by the Local 145 CBA, also retired during the CBA's term and received the same retirement benefits from US Filter, his pursuant to Section 17.03 of the Local 145 CBA.

Subsequently, Aquarion submitted proposals to the City to operate the Bridgeport waste water treatment facility. In September 2002, John Bonomo, the Vice President of Aquarion, wrote a letter to Andrew S. Abate, General Manager of the WPCA, stating: "[W]ith specific reference to the 1996 letter, and as indicated in our prior submittals: . . . There will be no disruption in pension plans. As required by the RFP, and as indicated in our previous responses, Aquarion will provide retirement benefits which will mirror those of the MERF plan." On April 18, 2003, Aquarion entered into an agreement to operate the waste water site.

After U.S. Filter's contract to operate the waste water treatment facilities terminated, Faustine, Bish, and Mohyde received the following letter from U.S. Filter:

The Bridgeport, CT project site was acquired by Aquarion Water Company (Aquarion) effective April 18, 2003.

In accordance with this acquisition, Aquarion has assumed full responsibility for the collective bargaining agreements that cover the employees at the Bridgeport site effective April 19, 2003. Therefore, USFilter Operating Systems was relieved of its obligations under the collective bargaining agreements for the provision of retiree medical insurance coverage

effective that same date, i.e. April 19, 2003.

However, as a courtesy during this transition, USFilter will continue your retiree medical benefits through June 30, 2003. If you have any questions regarding your future retiree medical insurance coverage, please contact Lucy Teixeira, who is with Aquarion's Human Resources Department, as (203) 337-5986.

The letter was copied to Lucy Teixiera of Aquarion.

On May 15, 2003, Faustine, Bish and Mohyde received a letter from Aquarion:

On May 7, 2003, you were inadvertently provided with a letter from [U.S. Filter] stating that [Aquarion] has purchased a project site located in Bridgeport. The purpose of this letter is to provide you with accurate facts about this business transaction.

Aquarion Services Company entered into an agreement with the City of Bridgeport to operate their [sic] wastewater operation effective April 18, 2003. As part of the agreement, Aquarion Services hired the employees who were formerly employed by U.S. Filter and are in the process of negotiating the union contracts with the various represented groups. Aquarion Services did not acquire a site nor assume collective bargaining unit agreements. No transaction has transpired between U.S. Filter and Aquarion Services to shift the responsibility of retiree medical insurance from U.S. Filter to Aquarion.

When a stock acquisition ensues between two companies, the acquirer takes on the liabilities of the purchased companies. Aquarion did not purchase U.S. Filter, and therefore U.S. Filter maintains all its liabilities associated with the implied or express promise to provide you with retiree medical insurance coverage and your pension benefit.

The letter closes with a suggestion to contact U.S. Filter with further questions.

On May 27, 2003, U.S. Filter wrote to Aquarion:

I am writing regarding the retiree medical benefits of three former employees at the Bridgeport CT site: Richard Faustine, Don Mohyde and Alexander Bish.

In accordance with its acquisition of the Bridgeport CT project site on April 19, 2003, Aquarion assumed full responsibility for the collective bargaining agreements that cover the employees at the Bridgeport site. Therefore, [U.S. Filter] was relieved of its obligations under the collective bargaining agreements for the provision of retiree medical coverage that same date, i.e., April 19, 2003.

* * *

Again, U.S. Filter has no retiree medical obligation by virtue of the termination of its collective bargaining agreements with the Bridgeport employees, coincident with the termination of its contract with the City of Bridgeport to operate the site.

Please be advised that [U.S. Filter] will honor its commitment to provide retiree medical insurance coverage for Messrs. Faustine, Mohyde and Bish through June 30, 2003. Further, due to the nature of this being retiree coverage, [U.S. Filter] does not have a continuation of coverage obligation under COBRA.

Finally, on May 29, 2003, Faustine and Mohyde received another letter from US Filter, which again stated that Aquarion had assumed full responsibility for the collective bargaining agreement but that US Filter would, as a courtesy, continue coverage through June 30, 2003.

Plaintiffs then brought suit in Superior Court for the Judicial District of Fairfield, and a temporary restraining order was issued prohibiting the defendants from canceling the plaintiffs' benefits. US Filter removed the case to this Court, and on August 1, 2003, this Court entered an order extending the

TRO, requiring US Filter to continue to provide the retiree health benefits to plaintiffs Bish and Faustine until further court order.

Plaintiffs' Amended Complaint alleges violations of the Labor Management Relations Act ("LMRA") and the Employment Retirement Income Security Act ("ERISA"), along with supplemental state common law claims. Counts One through Four, Six, and Seven of Plaintiffs' Amended Complaint allege breach of the collective bargaining agreement by US Filter and Aquarium, and are brought under § 301 of the Labor Management Relations Act, 29 U.S.C. §185. Count Five raises an equitable estoppel claim against US Filter, pursuant to the Court's supplemental jurisdiction in 28 U.S.C. § 1367. Count Eight through Ten make claims against Bridgeport for breach of contract and misrepresentation, and are brought under 28 U.S.C. § 1367. Counts Eleven through Sixteen allege, under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), that US Filter and Aquarion failed to provide benefits to plan participants.²

Aquarion has moved under Fed. R. Civ. P. 12(b)(6) to dismiss all claims against it, while US Filter has moved under Fed. R. Civ. P. 12(b)(6) to dismiss Count Five as preempted by federal

²Intervening plaintiff Mohyde asserts the same LMRA, ERISA, and common law claims, as well as an additional claim of judicial estoppel against defendant Bridgeport, and a claim of breach of fair representation against "Third Party Defendant Teamsters."

law, and under Fed. R. Civ. P. 12(b)(1) to dismiss Counts Eleven, Twelve and Fifteen for failure to exhaust administrative remedies.

II. Standard

When deciding a 12(b)(6) motion to dismiss, the Court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 513-14 (2002); Conley v. Gibson, 355 U.S. 41, 45-46 (1957). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

A motion to dismiss under Rule 12(b)(1) is proper to contest the basis for the Court's subject matter jurisdiction. "A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). The plaintiff has the

burden of proving by a preponderance of the evidence that subject matter jurisdiction exists. See id. (citing Malik v. Meissner, 82 F.3d 560, 562 (2d Cir. 1996)).

III. Discussion

A. Aquarion's Motion to Dismiss

Aquarion contends that it is not liable under either ERISA or the LMRA for any alleged breach of the collective bargaining agreement, because Aquarion (1) was never a party to the CBA, (2) never employed plaintiffs, (3) has no relationship with US Filter (as it "merely replaced US Filter as the private entity providing waste water treatment services to the City of Bridgeport"), and (4) did not assume the obligations under "US Filter's CBA to US Filter's retirees." See Def.'s Mem. L. Supp. Mot. Dismiss [Doc. # 30] at 2. Aquarion argues that plaintiffs' claim that Aquarion in fact assumed the obligations of the collective bargaining agreement between US Filter and the unions is "conclusory," "unsupported by any other factual assertions," and thus "insufficient to defeat Aquarion's motion to dismiss." Id. at 6. Aquarion also argues that section 301 of the LMRA only applies to violations by a signatory to a contract, and only to disputes between an employer and employees. Finally, Aquarion argues that ERISA does not apply because it was not the administrator or trustee of the retirement plan at issue.

Aquarion's motion is misguided, for it misstates the

standard of review for motions to dismiss and disregards the well-settled framework for determining the liability of subsequent employers under the LMRA and ERISA. In short, plaintiffs' allegations that Aquarion assumed the obligations of US Filter's collective bargaining agreement are sufficiently pled, and if proven, may form the basis of Aquarion's liability under the LMRA and ERISA.

1. Sufficiency of Plaintiffs' Pleadings

Federal Rule of Civil Procedure 8(a)(2) provides "that a complaint must include 'only a short and plain statement of the claim showing that the pleader is entitled to relief.' Such a statement must simply 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." Id. (citations omitted). It bears repeating, therefore, that at this stage of the proceedings, plaintiffs need not establish that they will likely prevail in their claim, but merely that they are entitled to present evidence in support of their claim. Given the notice pleading standard, "a court may dismiss a complaint only if it is

clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Swierkieicz, 534 U.S. at 513-14 (citations and internal quotation marks omitted).

Here, plaintiffs have alleged that Aquarion assumed the obligations in the collective bargaining agreement, and have supported this allegation with several letters from the various defendants attached to their complaint.³ They acknowledge the existence of other letters from Aquarion denying its assumption of any such obligation, and recognize that their discovery will need to explore "testimony from a number of people to ascertain the intent of the various parties as they negotiated this transition." Pl. Mem. Opp. Mot. Dis. [Doc. #37] at 12.

Notwithstanding these factual assertions, Aquarion argues alternatively that plaintiffs have failed to allege "any facts or events which, if believed, would support their legal assertion that Aquarion assumed the obligations of US Filter with respect to US Filter's retirees," Def. Aquarion's Rep. Supp. Mot. Dis. [Doc. # 39] at 1, and that plaintiffs' allegations are

³In one letter, for example, written by Aquarion prior to entering into an agreement to operate the waste water site, Aquarion represented to the WPCA that "there will be no disruption in pension plans." In other letters, US Filter, the company that Aquarion succeeded, declared that Aquarion assumed the obligations of the collective bargaining agreement US Filter signed with the unions. Aquarion has also written to the plaintiffs, however, asserting that it did not assume the obligations of the CBA.

"conclusory," Def. Aquarion's Mem. L. Supp. Mot. Dis. [Doc. # 30] at 6. Aquarion misstates the standard.

First, whether Aquarion assumed obligations under the collective bargaining agreement requires the resolution of several underlying factual disputes about the circumstances surrounding the transfer of management of certain operations at the WPCA from US Filter to Aquarion. Therefore, the relevant question under a 12(b)(6) motion is not whether Aquarion in fact assumed the obligations under the collective bargaining agreement, for all ambiguities in the documents attached to the complaint should be resolved in plaintiffs' favor at this stage. See International Audiotext Network, Inc. v. American Tel. and Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995). Instead, the relevant inquiry is whether Aquarion can be held liable under the LMRA or ERISA if plaintiffs prove the facts they are alleging. As discussed infra, the Court finds that Aquarion may be held liable under such facts.

Second, the assertion that plaintiffs' allegations are conclusory is both factually dubious, given plaintiffs' highly specific assertions, and irrelevant as a matter of law, as all that is required under Fed. R. Civ. P. 8 is a "short and plain statement" that gives the defendant fair notice of the claim. The cases that Aquarion cites to support its argument for a more stringent pleading standard have no bearing on plaintiffs'

claims. See Def. Aquarion's Mem. L. Supp. Mot. Dis. [Doc. # 30] at 6-7 (citing, e.g. De Jesus v. Sears, Roebuck & Co., Inc., 87 F.3d 65 (2d Cir. 1996); Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996)). De Jesus involved allegations of fraud, which, under Fed. R. Civ. P. 9, must be pled with greater particularity. Leeds, a 1996 civil rights case arising under § 1983, likewise was decided on the basis of a higher pleading standard.⁴ In contrast, claims under Fed. R. Civ. P. 8, as are plaintiffs', need only satisfy a minimal notice standard. Here, Aquarion clearly is on notice of the claims against it; it has, in fact, devoted much of its briefing to arguing against plaintiffs' factual claim that it assumed US Filter's obligations under the collective bargaining agreement. Viewed in this context, plaintiffs' complaint allegations plainly are sufficient to survive a motion to dismiss.

2. Framework under the LMRA for finding a subsequent business entity bound by an existing collective bargaining agreement

It is well settled under the LMRA that although a subsequent business entity generally is not bound by the collective bargaining agreement of its predecessor, it may impliedly or expressly assume the collective bargaining agreement's

⁴ Six years after the Second Circuit decided Leeds, the Supreme Court clarified, in Swierkeicz v. Sorema N.A., 534 U.S. 506 (2002), that civil rights actions, at least in the Title VII context, need only satisfy the notice pleading standard in Fed. R. Civ. P. 8.

obligations, and thereby agree to be bound. Because plaintiffs have alleged that Aquarion assumed the obligation in a preexisting collective bargaining agreement to provide retiree medical benefits to petitioners, they have adequately stated a claim for relief under the LMRA.

In a trio of cases, the Supreme Court established the framework for determining whether a subsequent company is bound by the collective bargaining agreement between a labor union and the predecessor employer. In Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964), the Supreme Court's first occasion to address the issue, the Court held that a successor had a duty to arbitrate under the terms of a predecessor employer's collective bargaining agreement, where there was a substantial continuity of identity in the business enterprise. See id. at 551. Wiley had acquired by merger the publishing firm Interscience Publishers, Inc., and thereafter refused to recognize the collective bargaining agreement between the employee's union and Interscience. As the Court noted, "Wiley, though recognizing for purposes of its own pension plan the Interscience service of the former Interscience employees, asserted that the merger terminated the bargaining agreement for all purposes." Id. at 545-46. The Supreme Court held that "the disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically

terminate all rights of the employees covered by the agreement, and that, in appropriate circumstances, present here, the successor employer may be required to arbitrate with the union under the agreement."⁵ Id. at 548.

National Labor Relations Board v. Burns International Security Services, 406 U.S. 272 (1972), presented the next occasion for the Court to address whether a subsequent employer could be bound by the terms of a predecessor's collective bargaining agreement. Burns had replaced the Wackenhut Corp. as the contractor providing plant protection services to a Lockheed Aircraft Service Co. factory, and refused to honor the collective bargaining agreement that Wackenhut had signed with the security guard's union. The Supreme Court held that Burns was not "bound to observe the substantive terms of the collective-bargaining contract the union had negotiated with Wackenhut and to which Burns had in no way agreed." Id. at 281-82.⁶ The Court

⁵The Supreme Court has since made clear that "[s]o long as there are other indicia of 'substantial continuity,' the way in which a successor obtains the predecessor's assets is generally not determinative of the 'substantial continuity' question." Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 44 n. 10 (1987); see also Howard Johnson Co. v. Detroit Local Joint Executive Bd., Hotel & Restaurant Employees, 417 U.S. 249, 257 (1974) ("ordinarily there is no basis for distinguishing among mergers, consolidations, or purchases of assets in the analysis of successorship problems").

⁶See also Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27 (1987) (reaffirming its holding in Burns that a successor employer is ordinarily not bound by the substantive provisions of a predecessor's collective-bargaining agreement, though it has an

distinguished Wiley, emphasizing, among other matters, that "[n]othing in its actions . . . indicated that Burns was assuming the obligations of the [collective bargaining] contract." Id. at 287.⁷

Because Wiley and Burns sent somewhat mixed signals, the Supreme Court again addressed the issue in Howard Johnson Co., Inc. v. Detroit Local Joint Executive Board, 417 U.S. 249 (1974), reconciling its earlier holdings. Drawing from Wiley and Burns, the Court observed that "'the substantial continuity of identity in the business enterprise,'" Howard Johnson, 417 U.S. at 259 (quoting Wiley, 376 U.S. at 551), or "an express or implied assumption of the agreement," id. at 264, were factors that could obligate a subsequent employer to follow the terms of the predecessor's collective bargaining agreement. The Court emphasized that its framework for determining the obligations of a subsequent employer to a predecessor's employees involved a

obligation to bargain with the union). Here, no claim is raised of a refusal to bargain with the union, and Aquarion has pointed out that it negotiated and entered into a collective bargaining agreement with employees' representatives. See Def. Aquarion's Mem. L. Supp. Mot. Dis. [Doc. # 30] at 4.

⁷The Court also noted that, unlike Wiley, "[h]ere there was no merger or sale of assets, and there were no dealings whatsoever between Wackenhut and Burns. On the contrary, they were competitors for the same work, each bidding for the service contract at Lockheed. Burns purchased nothing from Wackenhut and became liable for none of its financial obligations." Burns, 406 U.S. at 286.

fact-intensive inquiry:

Particularly in light of the difficulty of the successorship question, the myriad of factual circumstances and legal contexts in which it can arise, and the absence of congressional guidance as to its resolution, emphasis on the facts of each case as it arises is especially appropriate [T]he real question in each of these 'successorship' cases is, on the particular facts, what are the legal obligations of the new employer to the employees of the former employer or their representative? The answer to this inquiry requires analysis of the interests of the new employer and the employees and of the policies of the labor laws in light of the facts of each case and the particular legal obligation which is at issue, whether it be the duty to recognize and bargain with the union, the duty to remedy unfair labor practices, the duty to arbitrate, etc. There is, and can be, no single definition of 'successor' which is applicable in every legal context. . . .

Howard Johnson, 417 U.S. at 256, 264 n.9 (1974).

The clear import of these cases is that a subsequent employer, while generally not bound by the substantive provisions in a collective bargaining agreement signed by its predecessor, may under certain circumstances assume and thereby be bound by the obligations of the predecessor's collective bargaining agreement. Evaluating such claims is by necessity a fact-intensive endeavor. Indeed, as is clear from the Second Circuit's cases applying the Supreme Court framework, the ultimate resolution of LMRA successorship claims depends on the peculiar, highly developed factual record in each case. For example, in Stotter Division of Graduate Plastics Co. v. District 65, 991 F.2d 997 (2d Cir. 1993), the Court found a "substantial

continuity of identity" between the predecessor and subsequent employer when:

[T]he same plant is being operated, the Stotter name is being used, the same products are being made with the same equipment and methods of production, all the Stotter employees were retained by GPC, and employee benefits are calculated based on service time with both Stotter and GPC. . . . Additionally, the collective bargaining agreement between the Union and GPC expressly adopted the provisions of the Contract with only immaterial exceptions. Finally, because the delinquent contributions arose prior to the transfer of the business, this is not a case where the Union is "assert [ing] ... bargaining rights independent of the [Contract]."

Id. at 1001-02. As a result of these factual findings, the Court concluded that the subsequent employer had a duty to follow the arbitration clause in the collective bargaining agreement and arbitrate the Union's claims. Id. at 1002. In Local 32B-32J Service Employees International Union, AFL-CIO v. NLRB, 982 F.2d 845 (2d Cir. 1993), however, the Second Circuit stated that although the subsequent employer was found to have assumed the obligation to arbitrate under the collective bargaining agreement, its agreement to arbitrate did not mean that it "assumed the Agreement in full and is necessarily a successor with respect to legal obligations other than the obligation to arbitrate." Id. at 849-50 (upholding the NLRB's requirement that there be "clear and convincing evidence of consent, either actual or constructive, before [it] will find an assumption of the contract occurred."). In contrast, in National Labor Relations

Board v. Babad, 785 F.2d 46, 49-50 (2d Cir. 1986), the Second Circuit found that a subsequent building owner assumed its predecessor's labor contract when the collective bargaining agreement between the predecessor and the union provided that if the predecessor sold the building, it would require the purchaser to agree in writing to adopt the agreement; when the sale contract between the predecessor and subsequent business provided that the collective bargaining agreement was a permitted encumbrance; and when the collective bargaining agreement was specifically assigned to the successor.

Aquarion fails to address this precedent. Instead, Aquarion argues that plaintiffs' LMRA claims must be dismissed because Aquarion was not a signatory to US Filter's collective bargaining agreement with the unions and never employed plaintiffs, selectively citing to fact-specific conclusions and inapposite authorities. For example, in District 2 Marine Engineers Beneficial Association-Associated Maritime Officers v. Grand Bassa Tankers, Inc., 663 F.2d 392 (2d Cir. 1981), the Second Circuit held that a management contract between the owner of an oil tanker and the operator-employer was not within the scope of section 301 of the LMRA, because the owner was not an employer and did not sign the collective bargaining agreement with the employee's union. Thus, the management contract, not the collective bargaining agreement, was the purported basis for LMRA

jurisdiction. Moreover, unlike plaintiffs' claim against Aquarion, there was no claim in District 2 that Grand Bassa succeeded a predecessor as an employer, or assumed the obligations of the collective bargaining agreement. Likewise, in McPeck v. Beatrice Co., 936 F.Supp. 618, 622 (N.D. Iowa 1996), there was no claim of assumption of the collective bargaining agreement.

As plaintiffs correctly observe, the "issue is not whether [plaintiffs] were employed by Aquarion; the issue is whether Aquarion assumed responsibility for providing them the benefits that they earned when they were employed by Aquarion's predecessor." Pls.' Mem. L. Opp. Mot. Dis. [Doc. # 37] at 13. Because there is a factual dispute about whether Aquarion assumed the terms of the collective bargaining agreement, and a resolution of this dispute in plaintiffs' favor would entitle them to relief from Aquarion, Aquarion's motion to dismiss the LMRA claims is denied.

3. ERISA

Aquarion also seeks dismissal of plaintiffs' ERISA claims against them because Aquarion was never plaintiffs' employer nor an administrator of the ERISA plan that had been provided to plaintiffs by US Filter. Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), provides plan beneficiaries with a cause of action to enforce their rights under the terms of the plan.

Aquarion contends that the Second Circuit permits "only the plan and the administrators and trustees of the plan" to be held liable under Section 502(a)(1)(B), and requires dismissal of any claim brought against a party other than the administrator named in the plan. See Def. Aquarion's Mem. L. Supp. Mot. Dis. [Doc. # 30] at 9 (quoting Crocco v. Xerox Corp., 137 F.3d 105, 107 (2d Cir. 1998); Leonelli v. Penwalt Corp., 887 F.2d 1195 (2d Cir. 1989)).

Aquarion's reliance on Crocco and Leonelli is misplaced. In Crocco, 137 F.3d at 107, the Second Circuit found that when a named plan administrator was also a party defendant, an employer who was not specifically designated as a plan administrator in the retirement plan could not be held jointly liable for ERISA violations. The Second Circuit clarified that "the question before us is not whether a suit by Crocco against other Xerox employees may be treated as a suit against the Plan Administrator, but whether Crocco's cause of action against Xerox may be maintained in addition to her suit naming the Plan administrator as defendant." Id. at 107 n.3 (emphasis in original). Leonetti more closely supports Aquarion's argument, but also is ultimately distinguishable. In Leonetti, the Second Circuit noted that the district court properly denied on grounds of futility plaintiff's motion to amend his complaint to recast his common law claims as ERISA claims, because, inter alia, "the

proposed amended cause of action . . . would be barred by plaintiff's failure to name the Pension Administrative Committee as a defendant. In a recovery of benefits claim, only the plan and the administrators and trustees of the plan in their capacity as such may be held liable." Id. at 1199. Unlike Leonetti, however, the case at hand involves the issue of a subsequent business entity's liability if it assumes the obligation to contribute to a benefit plan. Because Aquarion argues that it did not assume this obligation, Aquarion disclaims any involvement in the administration of plaintiffs' benefit plan. Thus, Aquarion does not claim that it provided plaintiffs with information about who its Plan Administrator is, how to contact the Plan Administrator, or how to pursue administrative remedies.⁸ Under such circumstances, the failure to name a plan administrator is not fatal, and this Court will treat plaintiffs' ERISA claims against Aquarion as claims against Aquarion's plan administrator or trustees.

While this Court has not identified any cases that directly support plaintiffs' argument that a subsequent business may be liable in an ERISA civil enforcement action under 1132(a)(1)(b)

⁸See, e.g. 29 U.S.C. §1133 (requiring every employee benefit plan to "provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied," and to "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.")

under the circumstances of this case, it is clear that in related contexts, ERISA recognizes successor liability. For example, the First Circuit has concluded that in suits for breach of fiduciary duty under section 409(b) of ERISA, 29 U.S.C. § 1109(b), which states that "[n]o fiduciary shall become liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary," that "[n]othing in section 409(b) precludes a later fiduciary from assuming by contract the ERISA obligations of a former fiduciary." Watson v. Deaconess Waltham Hospital, 298 F.3d 102, 110 (1st Cir. 2002). In Audit Services, Inc. v. Rolfson, 641 F.2d 757,763 (9th Cir. 1981), the Ninth Circuit found that because a subsequent employer assumed the obligation in a collective bargaining agreement to contribute to a multi-employer benefit plan, it was liable under both the LMRA and ERISA. Likewise, in Central States, Southwest and Southwest Areas Pension Fund v. PYA/Monarch of Texas, Inc., 851 F.2d 780, 782-83 (5th Cir. 1988), the Fifth Circuit recognized the possibility of legal recovery under ERISA if the subsequent employer assumed the obligation to contribute to a benefit plan, though under the facts of the case, the court found that the obligation had not been assumed.

Because plaintiffs have stated facts in their complaint, which, if proven, may establish Aquarion's liability as a

successor under ERISA, Aquarion's motion to dismiss the ERISA counts is denied.

B. US Filter's Motion to Dismiss

US Filter has moved to dismiss Count Five of plaintiffs' amended complaint as preempted by federal law, and Counts Eleven, Twleve, and Fifteen of plaintiffs' Amended Complaint for failure to exhaust administrative remedies.

1. Preemption of Equitable Estoppel Claim

Count Five raises a state common law equitable estoppel claim against US Filter, alleging that "Plaintiff retirees Bish and Faustine have already chosen to retire in reliance upon US Filter's compliance with the terms of the collective bargaining agreement, and have incorporated into their decisions to retire at a particular time their expectations of continued no cost retiree medical insurance for life with the exception of the 5% contribution." Pl. Am. Compl. [Doc. # 22] at ¶24. US Filter argues that this claim is preempted by the LMRA, because it is based on a dispute over the terms of the collective bargaining agreement.

Section 301(a) of the LMRA, 29 U.S.C. § 185(a), provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act . . . may be brought in any district court of the United States having jurisdiction over

the parties" The Supreme Court has concluded that section 301 not only confers jurisdiction on the federal courts but also "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements." Textile Workers v. Lincoln Mills, 353 U.S. 448, 451 (1957). Thus, "if the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is preempted and federal labor-law principles--necessarily uniform throughout the Nation--must be employed to resolve the dispute." Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 405-06 (1988); see also United Steelworkers of America v. AFL-CIO-CLC, 495 U.S. 362, 368 (1990) ("Any state-law cause of action for violation of collective-bargaining agreements is entirely displaced by federal law under § 301.") (citing Avco Corp. v. Machinists, 390 U.S. 557 (1968)); Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U.S. 1, 23-24 (1983). ("[T]he preemptive force of § 301 is so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.' Any such suit is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of § 301.") (citation

omitted).

Nonetheless, the doctrine of preemption applies "only if such application requires the interpretation of a collective-bargaining agreement." Lingle, 486 U.S. at 413 (1988). See also Wall v. Construction & General Laborers' Union, 224 F.3d 168, 178 (2d Cir. 2000) ("Section 301 of the LMRA preempts claims that are 'inextricably intertwined with consideration of the terms of [a] labor contract.'" (quoting Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 213 (1985))); Vera v. Saks & Co., 335 F.3d 109, 114 (2d Cir. 2003) ("Not every suit concerning employment or tangentially involving a CBA . . . is preempted by section 301."). Plaintiffs thus argue that interpretation of the CBA is not required to adjudicate their equitable estoppel claim, and so Count Five not preempted by the LMRA. Plaintiffs argue first that "U.S. Filter claims that it is no longer obligated to comply with the collective bargaining agreement. Assuming this is so, it would appear to be irrelevant to U.S. Filter whether its actions comport with the agreement or not." Pl.'s Mem. L. Opp. Mot. Dis. [Doc. # 38] at 6-7. Second, plaintiffs contend that "it is not the terms of the agreement that form the basis of the plaintiffs' claim, but U.S. Filter's longstanding practice of administering retiree medical insurance coverage in a particular way, regardless of the terms of the collective bargaining agreement." Id. at 7.

Plaintiffs' first argument is unpersuasive. As plaintiffs acknowledge, US Filter's defense to plaintiff's claim that it is obliged by the CBA to provide plaintiffs with retirement medical benefits for life is that "its obligations under the collective bargaining agreement became null and void on the effective date that its contract with the City terminated." Pls.' Mem. L. Opp. US Filter's Mot. Dis. [Doc. # 38] at 7. A resolution of this dispute will require an interpretation of the CBA's provisions, including whether the benefits for those retired during the CBA's term had vested before the termination of the CBA. These sorts of issues are precisely the kind that must be dealt with under the federal common law pursuant to section 301 of the LMRA.

Plaintiff's second argument is also unavailing. Plaintiff's equitable estoppel claim in Count Five is expressly based on the CBA, alleging, for example that "US Filter has maintained a practice in accordance with the collective bargaining agreement," and that plaintiffs chose "to retire in reliance upon US Filter's compliance with the terms of the collective bargaining agreement." Pls.' Amended Complaint, Count Five [Doc. # 22] at ¶ 23. Moreover, US Filter's "longstanding practice" of providing retiree medical benefits is claimed to be a direct result of its duty under the terms of the collective bargaining agreement, not any unilateral beneficence. Because plaintiffs' common law estoppel claim requires interpretation of the CBA, it is

preempted by the LMRA. Accordingly, US Filter's motion to dismiss Count Five of Plaintiffs' complaint is granted.⁹

2. Exhaustion of Administrative Remedies

Defendants also claim that Plaintiffs' ERISA claims should be dismissed because plaintiffs failed to exhaust their administrative remedies under US Filter's Employee Welfare Benefit Plan. ERISA requires every employee benefit plan to "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." 29 U.S.C. §1133(2). Therefore, although ERISA itself does not include an exhaustion requirement, there is a "firmly established federal policy favoring exhaustion of administrative remedies in ERISA cases." Kennedy v. Empire Blue Cross and Blue Shield, 989 F.2d 588, 594 (2d Cir. 1993) (quoting Alfarone v. Bernie Wolff Construction, 788 F.2d 76, 79 (2d Cir. 1986)).

The US Filter Employee Welfare Benefit Plan has a "Claims and Appeal Procedure," which provides for administrative review

⁹The Court notes that while estoppel cannot be brought as an independent cause of action, in the opinion of at least one Circuit Court, the "federal common law of contract applicable under the LMRA includes the doctrine of promissory estoppel." Anderson v. AT & T Corporation, 147 F.3d 467, 477 (6th Cir. 1998). Further, the Second Circuit allows an estoppel theory for recovery in ERISA suits under 29 U.S.C. § 1132(a)(1)(B) in "extraordinary circumstances." See Lee v. Bukhart, 991 F.2d 1004, 1009 (2d Cir. 1993); Schonholz v. Long Island Jewish Medical Center, 87 F.3d 72, 78-79 (2d Cir. 1996).

of the denial of a claim. Paragraph 7(a)(4) states:

Review of Denial of Claim. A claimant may request a review by a committee appointed by the Company for such purpose (the "Group Health Benefit Review Committee") of a decision denying a claim in writing within 180 days following receipt of the denial. All such reviews shall be decided in writing by the Group Health Benefit Review Committee within the time periods specified below. . .

US Filter Employee Welfare Benefit Plan [Doc. # 33, Ex. A] at ¶ 7(a)(\$).

The Summary Plan Description further instructs claimants that "[i]n no event may you bring a legal action in court with respect to a dispute over your benefits under the Plan or any Benefit Program unless and until you have complied with the mandatory claim and appeals procedure under the applicable Benefit program." US Filter Employee Welfare Benefit Plan, Summary Plan Description [Doc. # 33, Ex. B]. Based on these provisions, US Filter argues that plaintiffs were on notice that they were required to exhaust their administrative remedies, and failed to do so.

The exhaustion requirement serves important purposes, including to "(1) uphold Congress' desire that ERISA trustees be responsible for their actions, not the federal courts; (2) provide a sufficiently clear record of administrative action if litigation should ensue; and (3) assure that any judicial review of fiduciary action (or inaction) is made under the arbitrary and capricious standard, not de novo." Davenport v. Abrams, Inc.,

249 F.3d 130, 133 (2d Cir. 2001) (citations and internal quotation marks omitted). If the pursuit of administrative remedies would be futile, however, then the purposes of the exhaustion requirement are not served, and the failure to exhaust may be excused. To overcome the exhaustion rule, plaintiffs must "make a clear and positive showing" that the administrative procedure would be futile. Kennedy, 989 F.2d at 594.

Plaintiffs acknowledge that they did not pursue administrative remedies, and agree that a failure to exhaust administrative remedies ordinarily bars an ERISA claim. They argue, however, that exhaustion would be futile in this case, for four reasons. First, they contend that the plaintiffs are not eligible for benefits under the Employee Welfare Benefit Plan on which US Filter relies, so the administrative procedure set out in that Plan is not applicable. Second, they argue that even if they were participants in the US Filter Employee Welfare Benefit Plan, pursuing administrative remedies would have been futile because the Plan does not require U.S. Filter to make contributions to the plaintiffs' insurance coverage, which is the relief that plaintiffs seek from this suit. Third, plaintiffs argue that exhaustion would have been futile because the Plan's administrative appeal procedure is meant for disputes about payment for particular medical services, not for disputes about payment of premiums. Finally, plaintiffs assert that exhaustion

is not necessary because pursuing the administrative process would have resulted in irreparable harm, since their claim would not have been resolved prior to the termination of their medical insurance coverage.

While plaintiffs first two arguments lack merit,¹⁰ the Court

¹⁰ As a preliminary matter, ERISA requires all benefit plans to have an administrative appeal procedure. See 29 U.S.C. §1133(2). Thus, to the extent that plaintiffs argue categorically that they are not required to pursue an administrative appeal under any benefit plan, their argument must fail. Moreover, plaintiffs' contention that the US Filter Employee Welfare Benefit Plan does not apply to them as retirees is unpersuasive. Though plaintiffs assert that the Plan provides that only active employees may be plan participants, the plain language of the plan suggests otherwise. For example, Paragraph 2(a) of the Plan states that the terms of the relevant benefit program, not the Employee Welfare Benefit Plan itself, determined who was eligible to participate. See [Doc. # 33, Ex. A] at ¶2(a) ("An individual shall become eligible to participate in one or more Benefit Programs or to receive benefits under one or more Benefit Programs only to the extent provided in the Operative Documents applicable to such Benefit Programs.") (emphasis added). The Summary Plan Description goes on to limit the definition of employee to those actively on the payroll, but notes that the definition applies only "[t]o the extent that a Benefit program requires that an individual be an employee for purposes of Benefit Program participation." See [Doc. # 33, Ex. B]. Thus, as US Filter concludes, "if a benefit program does not limit eligibility to active employees, the Plan does not do so either." Def. Us Filter's Rep. Mem. L. Supp. Mot. Dis. [Doc. # 41] at 7. Plaintiffs make no claim that there is no benefit program in which they are eligible to participate as retirees. Indeed, such an assertion would render plaintiffs' ERISA claims moot.

Plaintiffs' contention that only the collective bargaining agreement, not the Welfare Benefit Plan itself, obligated US Filter to pay retirement health benefits also must fail. A civil enforcement action under ERISA, 29 U.S.C. §1132(a)(1)(B), is brought to recover benefits due "under the terms of [the] plan." Thus, to the extent plaintiffs have claims under ERISA, not merely under the LMRA, the terms of the benefit plan itself are relevant. The Court agrees with US Filter's argument that "while

agrees that it would be futile for plaintiffs to pursue the administrative claim process, because the administrative procedure was aimed at resolving disputes about particular benefits for which coverage is in dispute under their respective health care benefit programs, and that is not the relief plaintiffs seek. "Exhaustion in the context of ERISA requires only those administrative appeals provided for in the relevant plan or policy." Kennedy, 989 F.2d at 594. Here, US Filter's Summary Plan Description defines a claim as "[a]ny request for benefits under a health care Benefit Program made in accordance with the Benefit Program's claims filing procedures, including any request for a service that must be pre-approved." See [Doc. # 33, Ex. B]. A claim is thus defined as request for benefits under a health care Benefit Program, not a request for payment of insurance premiums so that an individual would remain eligible to participate in the benefit program. Plaintiffs do not seek coverage for any particular medical service, and do not seek a determination of whether, under the terms of the plan itself, they are eligible participants. Compare Davenport, 249 F.3d at

Plaintiffs might assert elsewhere in their Amended Complaint that [US Filter] is obligated under the CBA to pay their medical coverage premiums, Counts Eleven, Twelve and Fifteen [those brought under ERISA] allege Bish and Faustine are eligible for continued coverage under the Plan." Def. US Filter's Rep. Supp. Mot. Dis. [Doc. # 41] at 8. The collective bargaining agreement cannot be read in isolation from the terms of the US Filter Welfare Benefit Plan.

132 (finding exhaustion required where claimant asserted eligibility to participate as an independent contractor under the terms of the benefit plan). Instead, plaintiffs's claim requires a determination first of which predecessor or subsequent employer, if any, must contribute to their benefit plan. In this regard, US Filter expressly instructed plaintiffs that Aquarion had assumed the obligations of the collective bargaining agreement and thus US Filter "was relieved of its obligations under the collective bargaining agreements for the provision of retiree medical insurance coverage". See Letter from Dianna Adams, US Filter Benefits Specialist, May 7, 2003 [Doc. # 22, Ex. 3]. The letter instructed plaintiff to contact Lucy Teixeira at Aquarion's Human Resources Department, if they had any questions regarding their future retiree medical insurance coverage. See id. In essence, then, US Filter represented to plaintiffs that it had no authority over their benefit plan. Plaintiffs' eligibility to participate in the plan was not based on the language of the plan, but on a corporate decision by US Filter to hand over to Aquarion the operation of Bridgeport's waste water treatment facilities, and a dispute between Aquarion and US Filter about the obligations Aquarion assumed by this transfer. As to this foundational dispute, there is nothing in the plan for an administrator to interpret, and no established administrative procedure for resolving such a claim. As a result, plaintiffs'

pursuit of the administrative appeal process would have been futile. The Court will thus excuse the exhaustion requirement.

III. Conclusion

For the foregoing reasons, Aquarion's motion to dismiss [Doc. # 29] is DENIED. US Filter's motion to dismiss [Doc. # 31] is GRANTED as to Count Five of Plaintiffs' Amended Complaint, but DENIED as to Counts Eleven, Twelve, and Fifteen.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 14th day of October, 2003.