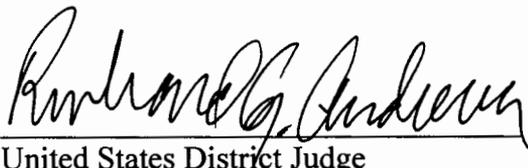


law claims are expressly preempted. See *Access Mediquip L.L.C. v. UnitedHealthCare Ins. Co.*, 662 F.3d 376, 383-86 (5th Cir. 2011), *aff'd en banc*, 698 F.3d 229 (5th Cir. 2012); *Oak Brook Surgical Centre, Inc. v. Aetna, Inc.*, 863 F.Supp.2d 724 (N.D. Ill. 2012).

In view of the above, the arguments about exhaustion of remedies and the right to a jury trial are moot. Further, the request for a more definite statement is not well-taken, and is therefore denied.

Defendant also argues that the “negligent misrepresentation” count is defective as it does not allege a “pecuniary duty” on Defendant’s part, is barred by the “economic loss doctrine,” and, as a tort, cannot be pursued when Plaintiff’s claims arise from a contract. Plaintiff’s Brief (D.I. 8, at 20) does not convince me that it has alleged a “pecuniary duty.” Defendant’s Briefs suggest that “pecuniary duty” refers to the Defendant having some “skin in the game.” If this is what is meant by “pecuniary duty,” then I do not think Plaintiff has so alleged. Neither party explores what is meant by “pecuniary duty.” Thus, while not entirely convinced by Defendant’s argument on “pecuniary duty,” I think Defendant has the better of it, and therefore I will dismiss the negligent misrepresentation count without prejudice. I do not state an opinion on the “economic loss doctrine.” I do not think the claims arise from the ERISA plan (that is, a contract) and thus I do not think the Defendant’s third argument is well-taken.

In view of the above, this 4th day of March 2013, IT IS HEREBY ORDERED that the Motion to Dismiss (D.I. 5) is **GRANTED IN PART AND DENIED IN PART**. Count II (negligent misrepresentation) is **DISMISSED WITHOUT PREJUDICE**. The balance of the Motion to Dismiss is **DENIED**.


United States District Judge