2025 WL 297142
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United States District Court, W.D. Pennsylvania.

CHERI DIGREGORIO Individually and as administratrix of the estate of Todd Digregorio, Deceased, Plaintiff,
v.
TRIVIUM PACKAGING COMPANY, Individually and as successor in interest to Exal Corporation; UNUM LIFE INSURANCE COMPANY OF AMERICA, Defendants.

Civil Action No. 23-2167
|
Filed 01/02/2025

Re: ECF No. 32

District Judge Arthur J. Schwab

REPORT AND RECOMMENDATION

MAUREEN P. KELLY UNITED STATES MAGISTRATE JUDGE

I. RECOMMENDATION

***1** It is respectfully recommended that the Court deny the Motion to Dismiss filed on behalf of Defendant Trivium Packaging Company, individually and as successor in interest to EXAL Corporation ("Trivium"). ECF No. 32.

II. REPORT

A. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Cheri DiGregorio ("Mrs. DiGregorio") brings this action individually and as Administratrix of the estate of her deceased husband Todd DiGregorio to recover life insurance benefits that she alleges were wrongfully denied. ECF No. 29. She names as defendants Trivium, in its capacity as her husband's former employer, and UNUM Life Insurance Company of America ("UNUM"). DiGregorio alleges claims under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 – 1461. In Count I, Mrs. DiGregorio asserts a claim under Section 1132(a)(1)(B) for the payment of life insurance benefits. In Count II, she alleges that Defendants breached their fiduciary duty owed to DiGregorio and to her husband under Section 1132(a)(3) because they failed to provide necessary forms and information to object to coverage decisions or to exercise conversion rights as provided by the policy at issue.

The following facts are set forth in the Amended Complaint and construed in the light most favorable to DiGregorio.

Todd DiGregorio began employment with EXAL Corporation ("EXAL"), Trivium's predecessor in interest, on May 11, 2004. ECF No. 29 ¶ 15. On May 31, 2017, the DiGregorios enrolled in a term life insurance policy through EXAL's employee benefit welfare plan. Id. ¶ 19. UNUM issued the policy and provided a $150,000 death benefit for Mr. DiGregorio and a $25,000 death benefit for Mrs. DiGregorio. Id. Under the plan, EXAL was required to remit the required premiums for coverage and deduct those sums from Mr. DiGregorio's paycheck. Id. ¶¶ 22, 23. The DiGregorios also enrolled in UNUM's Long Term Disability Plan, another benefit offered by EXAL. Id. ¶ 27.

On April 1, 2019, Mr. DiGregorio was determined to be disabled. UNUM approved long term disability ("LTD") benefits beginning on September 30, 2019, with the last payment made on September 29, 2021. Id. ¶ 28; ECF No. 29-3; ECF No. 29-5 at 3. Mr. DiGregorio died on October 18, 2021. ECF No. 29 ¶ 2.

UNUM's life insurance and LTD policy included a Life Insurance Waiver of Premium ("LWOP") benefit. Id. ¶ 28. Under the terms of the life insurance policy, because Mr. DiGregorio was under the age of 60 when he was declared disabled, all future premiums were to be waived beginning nine months after disability, or January 1, 2020. Id. ¶ 30. Despite the premium waiver, EXAL continued to pay premiums on Mr. DiGregorio's behalf through June 1, 2020. Id. ¶ 31.

Several times after the date of his disability, Mr. DiGregorio confirmed with Paul Goodemote, an EXAL/Trivium employee in its human resources department, that his life insurance was still in effect. Id. ¶ 32. On March 24, 2020, Goodemote sent Mr. DiGregorio a letter stating the that his LTD benefits through UNUM would not be impacted by the termination of his employment due to his disability. Id. ¶ 33. Mrs. DiGregorio alleges that during the phone call referenced in the letter, Goodemote again confirmed that life insurance coverage would not be affected because he was entitled to the LWOP benefit. Id. ¶ 34.

***2** Following Mr. DiGregorio's death in October 2021, Mrs. DiGregorio submitted a request for payment of the proceeds of his life insurance policy. Id. ¶ 35. UNUM denied the claim on November 1, 2022. According to UNUM, it had determined that Mr. DiGregorio could work in some capacity and, as such, it denied the LWOP benefit on May 21, 2020. Id. ¶ 36, ECF No. 29-5 at 3. However, UNUM continued to make LTD payments through September 29, 2021.

UNUM asserts that it sent a copy of the notice of the denial of LWOP benefits to the DiGregorios and to Goodemote on May 21, 2020. ECF No. 29 ¶ 36. UNUM also represents that it followed up its denial with a second copy of the letter and advised Mr. DiGregorio of his appeal rights by a voice message on June 25, 2020. UNUM claims it was EXAL's responsibility to provide the DiGregorios the option to convert their life insurance policy. Because the coverage was not converted or otherwise extended, the life insurance policy was terminated. EXAL also opted to obtain coverage from another company and separately terminated the Group Life Insurance coverage through UNUM effective December 31, 2020. Id.

Mrs. DiGregorio denies that she or her husband ever received the May 21, 2020, letter or the second copy allegedly sent, or the June 25, 2020, voice mail message. Id. ¶¶ 42-45. Goodemote also denies that UNUM notified him or EXAL that the DiGregorio's LWOP benefit was denied or that his life insurance was terminated. Id. ECF No. 29-6 at 1. However, Mrs. DiGregorio alleges that a copy of UNUM's letter was found in her husband's EXAL work file; thus, EXAL received timely notice by email. ECF No. 29 ¶ 48. Mrs. DiGregorio alleges that if she or her husband received the denial letter from UNUM or notice of the denial from EXAL, she and her husband would have timely appealed or paid the premiums independently of EXAL to continue coverage. Id. ¶¶ 41, 52-54.

Mrs. DiGregorio also alleges that after EXAL received notice of UNUM's denial of LWOP benefit, it failed to extend the conversion or portability privileges to which the DiGregorios were entitled. Id. ¶ 49. Because EXAL and UNUM failed to notify the DiGregorios of the denial of LWOP benefits, they relied on prior representations by EXAL that coverage was in place. In addition, EXAL never notified them that it ceased payment of monthly premiums as of June 1, 2020, or that it terminated the Group Life Insurance coverage through UNUM as of December 2020. Id. ¶¶ 54-59.

Mrs. DiGregorio alleges that the State of Maine Department of Professional and Financial Regulation advised her that EXAL/Trivium was the Plan Administrator under ERISA. Therefore, she contends EXAL/Trivium was responsible to offer Mr. DiGregorio conversion and portability options when the LWOP benefit was denied. Because EXAL/Trivium and UNUM failed to provide required notice, Mrs. DiGregorio alleges that she has not received the life insurance proceeds owed her.

Mrs. DiGregorio commenced this action to recover the life insurance policy proceeds with her initial Complaint filed on December 23, 2023. In that Complaint, she alleged claims under Pennsylvania state law against both Defendants. ECF No. 1. Trivium and UNUM moved to dismiss the Complaint for failure to state a claim based on federal preemption under ERISA. ECF Nos. 15 and 20. Mrs. DiGregorio responded with the operative First Amended Complaint. ECF No. 29. UNUM filed an Answer. ECF No. 31. Trivium filed the pending Motion to Dismiss. ECF No. 32.

***3** In the Motion to Dismiss, Trivium contends that DiGregorio fails to state a claim under ERISA because: (1) she failed to exhaust administrative remedies before filing this action; (2) Trivium is not a proper party to this case because it is neither the plan nor the plan administrator; and (3) DiGregorio's breach of fiduciary claim is improperly duplicative of her claim for denial of benefits. Id. DiGregorio filed a Brief in Opposition to the Motion to Dismiss. ECF No. 41. Trivium filed a Reply Brief. ECF No. 42.

The Motion to Dismiss is ripe for consideration.

B. STANDARD OF REVIEW

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). The complaint must "state a claim to relief that is plausible on its face" by providing facts which "permit the court to infer more than the mere possibility of misconduct...," Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009), and "raise a right to relief above the speculative level," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In assessing the plaintiff's claims, "the Court must accept all non-conclusory allegations in the complaint as true, and the non-moving party 'must be given the benefit of every favorable inference.' " Mergl v. Wallace, No. 2:21-CV-1335, 2022 WL 4591394, at *3 (W.D. Pa. Sept. 30, 2022) (quoting Malleus v. George, 641 F.3d 560, 563 (3d Cir. 2011) and Kulwicki v. Dawson,

969 F.2d 1454, 1462 (3d Cir. 1992)). "However, the Court 'disregard[s] threadbare recitals of the elements of a cause of action, legal conclusions, and conclusory statements.' " Mergl, 2022 WL 4591394, at *3 (quoting City of Cambridge Ret. Sys. v. Altisource Asset Mgmt. Corp., 908 F.3d 872, 878–79 (3d Cir. 2018) and James v. City of Wilkes-Barre, 700 F.3d 675, 681 (3d Cir. 2012)).

C. DISCUSSION

1. Exhaustion

"An ERISA beneficiary may bring a civil action to 'recover benefits due to him under the terms of his plan, to enforce his rights under the terms of his plan, or to clarify his rights to future benefits under the terms of the plan.' " Harrow v. Prudential Ins. Co. of Am., 279 F.3d 244, 249 (3d Cir. 2002) (quoting 29 U.S.C. § 1132(a)(1)(B)). "Except in limited circumstances ... a federal court will not entertain an ERISA claim unless the plaintiff has exhausted the remedies available under the plan." Id. (citations omitted). Trivium argues that this action should be dismissed because Mrs. DiGregorio has not exhausted administrative remedies available under the benefit plan for the denial of LWOP or death benefits. ECF No. 33 at 10.

"The ERISA exhaustion requirement is an affirmative defense, so the defendant bears the burden of proving failure to exhaust." Am. Chiropractic Ass'n v. Am. Specialty Health Inc., 625 F. App'x 169, 173 (3d Cir. 2015) (citing Metro. Life Ins. v. Price, 501 F.3d 271, 280 (3d Cir. 2007)). The exhaustion defense is "typically resolved on summary judgment" and "is not generally the basis for dismissal under Rule 12(b)(6)." Id. at 173 n.5 (citation omitted). "Whether failure to exhaust 'may be the basis for dismissal for failure to state a claim depends on whether the allegations in the complaint suffice to establish that ground, not on the nature of the ground in the abstract.' " Id. (quoting Jones v. Bock, 549 U.S. 199, 215 (2007)).

"ERISA's exhaustion requirement bears all the hallmarks of a nonjurisdictional prudential rule." Price, 501 F.3d at 279. "[I]t is a judge-made prudential rule that permits 'flexible exceptions for waiver, estoppel, tolling, or futility.' " Gadsby v. United of Omaho Life Ins., No. 18-2214, 2019 WL 1405485, at *5 (E.D. Pa. Mar. 28, 2019) (quoting Price, 501 F.3d at 279). The following nonexclusive list of factors is used to determine whether exhaustion would be futile:

***4** (1) whether plaintiff diligently pursued administrative relief;

(2) whether plaintiff acted reasonably in seeking immediate judicial review under the circumstances;

(3) existence of a fixed policy denying benefits;

(4) failure of the insurance company complying with its own internal administrative procedures; and

(5) testimony of plan administrators that any administrative appeal was futile.

Harrow, 279 F.3d at 250.

"If a defendant satisfies its burden of proving failure to exhaust [on the face of the complaint], then the party claiming futility 'must provide a clear and positive showing of futility.' " Gadsby, 2019 WL 1405845, at *6 (quoting D'Amico v. CBS Corp., 297 F.3d 287, 293 (3d Cir. 2002).

Mrs. DiGregorio alleges in the Amended Complaint that she and her husband exhausted available administrative remedies for their benefit claims. ECF No. 63. In response to the Motion to Dismiss, Mrs. DiGregorio states that Trivium failed to send required correspondence related to the premium waiver "supposedly sent in May of 2020." ECF No. 41 at 4. Her allegation is supported by the December 21, 2022 letter from Goodemote, who confirms that UNUM failed to forward the termination notice to Trivium so that it could offer conversion or portability of coverage. ECF No. 29-6 at 1. Mrs. DiGregorio alleges that if the required information had been sent by either UNUM or Trivium, the DiGregorios would have timely challenged the LWOP denial, but could not do so before filing this litigation because the time for an appeal had long since passed. Id. Further, exhaustion would be futile because UNUM made clear through the correspondence to Mrs. DiGregorio dated November 1, 2022, that resort to administrative remedies would result in an adverse decision. See Gadsby, at *7.

At this initial stage of the proceedings and based on the allegations in the Amended Complaint that are taken as true as this stage of the litigation, Mrs. DiGregorio sets forth a clear and positive showing of futility. Thus, it is recommended that the Court deny the Motion to Dismiss based on failure to exhaust.

2. Trivium – Proper Party

"In a claim for wrongful denial of benefits under ERISA, the proper defendant is the plan itself or a person who controls the administration of benefits under the plan." Evans v. Emp. Ben. Plain, Camp Dresser & McKee, Inc., 311 F. App'x 556, 558 (3d Cir. 2009). In addition, a claim may be asserted for breach of fiduciary duty against a party that acts in a fiduciary capacity.

To state an ERISA breach of fiduciary duty claim against Trivium, Mrs. DiGregorio must allege facts that could establish that: (1) Trivium was "acting in a fiduciary capacity"; (2) Trivium made "affirmative misrepresentations or failed to adequately inform plan participants and beneficiaries"; (3) the misrepresentation or inadequate disclosure was material; and (4) Mr. or Mrs. DiGregorio detrimentally relied on the misrepresentation or inadequate disclosure. In re Unisys Corp. Retiree Med. Benefits ERISA Litig., 579 F.3d 220, 228 (3d Cir. 2009).

> As for the first element, "ERISA ... defines 'fiduciary' not in terms of formal trusteeship, but in functional terms of control and authority over the plan." Mertens v. Hewitt Assocs., 508 U.S. 248, 262, 113 S.Ct. 2063, 124 L.Ed.2d 161 (1993). Accordingly, "[f]iduciary duties under ERISA attach not just to particular persons, but to particular persons performing particular functions." Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155, 1158 (3d Cir. 1990). Accordingly, "a person is a fiduciary with respect to a plan only to the extent that he has any discretionary authority or discretionary responsibility in the administration of such plan." Varity Corp. v. Howe, 516 U.S. 489, 527, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996) (internal quotation marks omitted). "A plan administrator ... acts as a fiduciary when explaining plan benefits and business decisions about plan benefits to its employees." Adams [v. Freedom Forge Corp., 204 F.3d 475, 492 (3d Cir. 2000)].

***5** Id. In Unisys, the United States Court of Appeals for the Third Circuit agreed that an employer "acts as a fiduciary when explaining plan benefits and business decisions about plan benefits to its employees." Id. at 230 (citing Adams, 204 F.3d at 492).

Trivium contends that it is not a proper defendant under ERISA because it is neither the Plan nor the Plan Administrator. ECF No. 33 at 12. However, in response to the initial Complaint, UNUM filed a copy of the base policy issued to EXAL with an ERISA statement that identifies EXAL as "the Plan Administrator and named fiduciary of the Plan, with authority to delegate its duties." ECF No. 21-1 at 56. The supplemental policy attached to Trivium's Motion to Dismiss does not contain an ERISA statement identifying the Plan Administrator. ECF No. 33-1. Therefore, the Court cannot readily determine the identity of the Plan Administrator or rule out Trivium as the responsible Plan Administrator based on the documents provided by Trivium.

In addition, Mrs. DiGregorio alleges that an authorized Trivium representative advised both Mrs. DiGregorio and her husband of their continued eligibility for coverage for LTD and LWOP benefits after his termination based on disability. ECF No. 29 ¶¶ 33 – 34. As a result, the DiGregorios did not exercise a right to conversion. UNUM represented that Trivium was "responsible for extending conversion/portability privileges if they ceased his benefits...." ECF No. 29-5 at 4. While thin, the allegations in the Amended Complaint and the attached exhibits are enough to state a plausible claim that Trivium was responsible for the administration of certain benefits under the policy at issue, and in doing so misrepresented the continuation of the LWOP benefit. See, e.g., Erwood v. Life Ins. of N. Am., No. 14-1284, 2016 WL 4945320 (W.D. Pa. Sept. 16, 2016). Thus, at this early stage of the litigation, it is recommended that the Court deny the Motion to Dismiss based on Trivium's assertion that it was not the Plan Administrator or liable for breach of any fiduciary duty owed to Mr. or Mrs. DiGregorio.

3. Duplicative claims

Trivium asserts that Mrs. DiGregorio's claim for breach of fiduciary duty under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), cannot be pursued together with her claim for wrongful denial of benefits under Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). ECF No. 33 at 13-14 (citing Cohen v. Prudential Ins., No. 08-5319, 2009 WL 2488911, at *4 (E.D. Pa. 2009), *reconsideration denied by* 2010 WL 1257659 (E.D. Pa. Mar. 25, 2010), in turn citing Varity Corp. v. Howe, 516 U.S. 489 (1996)).

In Varity, the United States Supreme Court interpreted Section 502(a)(3) as a "catchall" provision that "offer[s] appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy." Id. at 512. In the case before it, the Supreme Court held that the plaintiffs who could not pursue relief under Section 502(a)(1)(B) for benefits due because they were deceived into withdrawing from the ERISA plan were instead entitled to

rely on Section 502(a)(3) to pursue other " 'appropriate' equitable relief." Id. However, the Supreme Court noted that "where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief...." Thus, if recovery is obtained under another provision, equitable relief "would not be 'appropriate.' " Id. at 515.

***6** Since Varity, courts in the Third Circuit agree that a party cannot recover under both provisions but there is disagreement as to whether a plaintiff may pursue both claims at the pleading stage as alternative bases for relief. See Freitas v. Geisinger Health Plan, 542 F. Supp. 3d 283, 310-312 (M.D. Pa. 2021) (collecting cases). Neither the Supreme Court nor the United States Court of Appeals for the Third Circuit has addressed this issue when considering a motion to dismiss, and there is a split of authority within the district courts in this Circuit.[1] Id. at *n*. 149, 150. In Frietas, the district court agreed with the approach adopted by the United States Court of Appeals for the Second Circuit in Devlin v. Empire Blue Cross & Blue Shield, 274 F.3d 76, 89 (2d Cir. 2001), and concluded that at the pleading stage, where it is not yet certain that adequate relief is available under Section 502(a)(1), a plaintiff should not be barred from asserting a claim under Section 502(a)(3). Thus, dismissal at the pleading stage on grounds of duplicative claims was premature and best reserved for resolution at the summary judgment stage. Frietas, 542 F. Supp. 3d at 312.

The approach adopted in Frietas comports with Federal Rule of Civil Procedure 8(d)(2), which permits a party to "set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones." Fed. R. Civ. P. 8(d)(2). See, e.g., HUMC Opco LLC v. United Benefit Fund, No. 16-168, 2016 WL 6634878, at *4 (D.N.J. Nov. 7, 2016) ("This claim of redundancy may be dealt with more soundly on a developed factual record, whether on summary judgment or in connection with focusing the issues preliminary to trial.), citing Shah v. Horizon Blue Cross Blue Shield, No. 15-8590, 2016 WL 4499551 at *10 (D.N.J. Aug. 25, 2016) (finding dismissal premature, and holding that Varity does not create a rule precluding the assertion of alternative claims or requiring dismissal at the Rule 12(b)(6) stage of duplicative claims under ERISA §§ 502(a)(1)(B) and 502(a)(3)). While "Varity noted that § 502(a)(3) is a catchall provision (and thus a provision of last resort), Varity also premised its conclusion on the principle that Congress did not intend to leave beneficiaries without a remedy. Though the Court acknowledges that a plaintiff may not recover under truly duplicative claims, that does not mean a plaintiff should be barred from asserting a claim under § 502(a)(3) where it is not yet clear that relief is actually available under another provision." Frietas, 542 F. Supp. 3d at 312. Further, in this case, it may be that the breach of fiduciary claim is based on Trivium's separate misleading plan information upon which the DiGregorios relied when they failed to convert coverage, which is distinct from their claim for denial of benefits. See, e.g., Popovchak v. UnitedHealth Group, 692 F. Supp. 3d 392, 414 *n*. 24 (S.D.N.Y. 2023); Desue v. Aetna Life Ins. Co., No. 16-1646, 2017 WL 528241, at *4-5 (W.D. Pa. Feb. 9, 2017). Accordingly, it is recommended that the motion to dismiss Mrs. DiGregorio's breach of fiduciary duty claims be denied.

D. CONCLUSION

For the foregoing reasons, it is respectfully recommended that the Motion to Dismiss, ECF No. 32, be denied.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rule 72.D.2, the parties may file written objections in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Failure to timely file objections will waive the right to appeal. Brightwell v. Lehman, 637 F.3d 187, 193 n. 7 (3d Cir. 2011). Any party opposing objections may respond to the objections within 14 days in accordance with Local Civil Rule 72.D.2

All Citations

Slip Copy, 2025 WL 297142

Footnotes

1 Trivium's citation to Berkelhammer v. ADP TotalSource Grp., Inc., 74 F.4th 115 (3d Cir. 2023) does not persuade the Court to reach a different conclusion. There, the Third Circuit resolved a motion to compel

arbitration related to a claim related to the management of a retirement savings plan. While the Third Circuit concluded that a party could not obtain relief under Section 502(a)(3) if another provision of ERISA offered an adequate remedy, it did not resolve whether alternate theories of recovery pleaded in accordance with Fed. R. Civ. P. 8(d) could survive a motion to dismiss. Id. at *n.* 5.

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