2023 WL 177909
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United States District Court, E.D. New York.

John MCQUILLIN, Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY, Defendant.

20-CV-2353 (JS) (ARL)

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Signed January 13, 2023

Attorneys and Law Firms

Jeffrey D. Delott, Law Offices of Jeffrey Delott, Jericho, NY, for Plaintiff.

Patrick W. Begos, Robinson & Cole LLP, Stamford, CT, Brennan Breeland, Robinson & Cole LLP, New York, NY, for Defendant.

ORDER

LINDSAY, Magistrate Judge:

***1** Plaintiff John McQuillin ("Plaintiff") brings this action against Hartford Life and Accident Insurance Company ("Defendant" or "Hartford"), alleging a violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et. seq.* Currently before the Court is Plaintiff's motion to amend the complaint pursuant to Federal Rule of Civil Procedure ("Rule") 15(a). ECF No. 54. For the reasons set forth below, Plaintiff's motion to amend is granted.

BACKGROUND

I. Procedural Background

Plaintiff commenced this action on May 27, 2020. ECF No. 3. On August 14, 2020, Defendant moved to dismiss the Complaint pursuant to Rule 12(b)(6) on the grounds that Plaintiff failed to allege that he exhausted his administrative remedies. ECF No. 15. On November 9, 2020, Plaintiff filed a motion seeking an order preventing Defendant from adding to the Administrative Record those pages from the claim file, which contain information that Defendant added after May 26, 2020. ECF No. 30. By report and recommendation dated February 12, 2021, the undersigned recommended that Defendant's motion to dismiss Plaintiff's ERISA claims on the basis of failure to exhaust administrative remedies be granted and that Plaintiff's motion to prelude Defendant from adding to the administrative record "those pages from the claim file, which contain information that Defendant added after May 26, 2020 be denied. ECF No. 38. The report and recommendation was adopted by Judge Seybert on May 25, 2021. ECF No. 43. Plaintiff appealed the determination, and, on July 21, 2022, the Second Circuit reversed the dismissal of Plaintiff's claim. On August 25, 2022, Defendant filed an answer to the original complaint. ECF No. 53. On August 31, 2022, Plaintiff filed the instant motion to amend the complaint. ECF No. 54. [1] Defendant opposes the motion, arguing that the amendment is futile. ECF No. 57.

II. The Complaint

The following facts are drawn from the Amended Complaint (which is attached as exhibit A to Plaintiff's motion at ECF No. 54) and are accepted as true for purposes of the instant motion. *Samuels v. Air Transp. Local 504*, 992 F.2d 12, 15 (2d Cir. 1993). These facts, however, do not constitute findings of fact by the Court. *See Colvin v. State University College at Farmingdale*, No. 13-CV-3595 (SJF)(ARL), 2014 U.S. Dist. LEXIS 85678, 2014 WL 2864224, at *1 n.1 (E.D.N.Y. June 19, 2014).

Plaintiff is a 58 year-old male residing in Glen Head, New York. Am. Compl. ¶ 1. Plaintiff was employed by Wright Medical Technology Inc. (the "Employer") until February 17, 2019. *Id.* Plaintiff sold foot/ankle surgical equipment for the Employer. *Id.* at ¶11. He was diagnosed with prostate cancer in January 2019 and had surgery in April 2019. *Id.* at ¶¶ 26, 35. Plaintiff was covered by the Group Long Term Disability Plan for Employees of Wright Medical Group (the "LTD Plan"). The Employer sponsored the "LTD Plan," and is the Plan Administrator. *Id.*

***2** Defendant Hartford is licensed to conduct the business of insurance in the State of New York, and maintains its principal place of business in Hartford, Connecticut. *Id.* at ¶ 3. Hartford issued the insurance policy that is responsible for paying benefits under the LTD Plan, and decides if claimants are entitled to benefits under it. *Id.*

Plaintiff alleges that he filed a claim for long term disability benefits under the Plan on September 11, 2019. *Id.* at ¶¶ 43-44. Plaintiff also alleges that Hartford denied his claim by letter dated October 25, 2019. *Id.* at ¶¶ 53-54. By letter dated December 5, 2019, Hartford notified Plaintiff that his deadline to appeal Hartford's denial of his claim was April 22, 2020. *Id.* at ¶ 72. Plaintiff requested an extension of the deadline, which was denied. *Id.* at ¶ 73. On February 19, 2020, Plaintiff requested a 30 days extension beyond April 22, 2020. Hartford never agreed, nor even provided Plaintiff with an answer. Plaintiff filed his appeal on April 11, 2020. *Id.* at ¶ 74. According to Plaintiff, Hartford failed to render a decision on Plaintiff's appeal on a timely basis; i.e., within 45 days, and never made a proper extension request. *Id.* at ¶ 18. Plaintiff filed this action on May 27, 2020, 46 days after filing his appeal of Hartford's denial of his benefits.

The Amended Complaint adds a single new allegation:

> Hartford's unwritten protocols for remanding administrative appeals to its claim department, and relying on the EBSA **COVID** notice to delay rendering timely benefits decisions, breach Hartford fiduciary duty to all LTD Plan participants

Amended Compl. ¶ 104. In addition, in the WHEREFORE clause at the end of the Amended Complaint, Plaintiff seeks an order that Defendant be removed as claim administrator from the Plan.

I. Standard of Law

Under Rule 15(a), "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Rule 15(a)(2). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Rule 15(a)(2). "Amendments are generally favored as they tend to facilitate a determination on the merits." *Zucker v. Porteck Global Servs., Inc.*, No. 13-CV-2674(JS)(AKT), 2015 U.S. Dist. LEXIS 144132, 2015 WL 6442414, at *4 (E.D.N.Y. 2015) (citations omitted); *Shakespeare v. Live Well Fin., Inc.*, No. 18-CV-7299 (JMA)(AYS), 2022 U.S. Dist. LEXIS 180050, 2022 WL 4642736 (E.D.N.Y. Sep. 30, 2022). "Thus, leave to amend a complaint ... 'should be denied only because of undue delay, bad faith, futility, or prejudice to the non-moving party, and the decision to grant or deny a motion to amend rests within the sound discretion of the district court.' " *Addison, Addison v. Reitman Blacktop, Inc.*, 283 F.R.D. 74, 79 (E.D.N.Y. 2011) (quoting *DeFazio v. Wallis*, No. 05-CV-5712, 2006 U.S. Dist. LEXIS 95154, 2006 WL 4005577, at *1 (E.D.N.Y. Dec. 9, 2006)); *Mendez v. U.S. Nonwovens Corp.,* 2 F. Supp. 3d 442, 451 (E.D.N.Y. 2014).

Defendant here argues that the proposed amendment is futile. An amendment is futile if the proposed claim could not withstand a motion to dismiss under Rule 12(b)(6). *IBEW Local Union No. 58 Pension Trust Fund and Annuity Fund v. Royal Bank of Scotland PLC*, 783 F.3d 383, 389 (2d Cir. 2015). The Supreme Court clarified the appropriate pleading standard in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), in which the court set forth a two-pronged approach to be utilized in analyzing a motion to dismiss. District courts are to first "identify [ ] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 679. Though "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* Second, if a complaint contains "well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a [d]efendant has acted unlawfully." *Id.* at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007) (internal citations omitted)).

II. Analysis

***3** Here, Plaintiff seeks to amend the complaint to add an allegation that Defendant breached its fiduciary duty to all plan participants, and seeks to have Defendant removed as Defendant removed as claim administrator from the Plan. "To state a claim for breach of fiduciary duty under ERISA, a plaintiff must, at a minimum, allege '1) that the defendant was a fiduciary who, 2) was acting within his capacity as a fiduciary, and 3) breached his fiduciary duty." *Eaves v. Designs for Finance, Inc.*, 785 F. Supp. 2d 229, 260 (S.D.N.Y. 2011); see also 29 U.S.C. § 1132(a)(2); 29 U.S.C. § 1109(a). ERISA imposes "four distinct, but interrelated duties" on fiduciaries, including the duty to act "for the exclusive purpose of ... providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan." *Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med. Centers Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.,* 712 F.3d 705, 715 (2d Cir. 2013) (quoting 29 U.S.C. § 1104(a)(1)(A)). Fiduciaries must:

- act "for the exclusive purpose of ... providing benefits to participants and their beneficiaries[ ] and defraying reasonable expenses of administering the plan." 29 U.S.C. § 1104(a)(1)(A).
- use "the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." Id. § 1104(a)(1)(B).
- "diversify[ ] the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so." Id. § 1104(a)(1)(C).
- discharge their duties "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with [other provisions of ERISA]." Id. § 1104(a)(1)(D).

Where, as here, Plaintiff's claim arises out of the denial of benefits, the Supreme Court has noted the possibility that a plaintiff might attempt to "repackage" his or her "denial of benefits" claim as a claim for "breach of fiduciary duty"," and that lawyers might "complicate ordinary benefit claims by dressing them up in 'fiduciary duty' clothing." *Fitch v. Chase Manhattan Bank, N.A.*, 64 F. Supp. 2d 212, 229 (W.D.N.Y. 1999) (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 515, 134 L. Ed. 2d 130, 116 S. Ct. 1065 (1996)); *see also Nechis v. Oxford Health Plans, Inc.*, 421 F.3d 96, 104 (2d Cir. 2005) (declining "to perceive equitable clothing where the requested relief is nakedly contractual" with respect to plaintiff's claim for restitution under § 502(a)(3) of ERISA). The Supreme Court directed courts to prevent plaintiffs from having two bites at the apple in this fashion, and that "we should expect that where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be 'appropriate.' " *Id.* at 515. Here, rather than seek monetary relief for his breach of fiduciary duty claim Plaintiff is seeking the removal of Defendant as plan fiduciary.

Plaintiff seeks to amend the complaint to allege that Defendant's "unwritten protocols for remanding administrative appeals to its claim department and relying on the EBSA **COVID** notice to delay rendering timely benefits decisions, breach [Defendant's] fiduciary duty to all LTD Plan participants." Am. Compl. ¶ 104. In his reply memorandum, Plaintiff argues that based upon this conduct "Defendant breached its fiduciary duties by: (1) violating ERISA Section 29 U.S.C. § 1104(a)(1)(A), for failing to discharge duties solely in the interests of the participants and beneficiaries; and (2) violating 29 U.S.C. § 1104(a)(1)(B), for failing to act with the care, skill, prudence and diligence that a person acting in a like capacity and familiar with such matters would use." Pl. Reply Mem. at 3.

***4** The duty of loyalty requires that "decisions be made with an eye single to the interests of the participants and beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982). To plausibly plead a duty of loyalty claim under ERISA, a plaintiff must allege facts showing that the fiduciary in question acted purposely—or with the "goal" of "providing benefits to itself or someone else." *Sacerdote v. New York Univ.,* No. 16-CV-6284 (KBF), 2017 U.S. Dist. LEXIS 137115, 2017 WL 3701482, at *5 (S.D.N.Y. Aug. 25, 2017). Plaintiff argues that he alleges that "Defendant simultaneously determined that the evidence showed McQuillin was disabled and entitled to receive benefits for which Defendant was not liable, while it also determined that the evidence showed McQuillin was not disabled and not entitled to receive benefits for which Defendant was liable." Pl. Reply Mem. at 5. According to Plaintiff, this allegation is sufficient at the pleading stage was acting in its own best interest rather than in the best interest of the participants or beneficiaries. As recognized by Plaintiff, the Supreme Court has noted that if the plan administrator's willful refusal to pay contractually authorized benefits is part of a larger systematic breach of fiduciary obligations, then ERISA allows the claimant to ask for removal of the fiduciary. Pl. Mem. at 3 (citing *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147, 105 S.Ct. 3085, 3092 (1985)). This fact, standing alone, does not support Plaintiff's contention that Defendant's delay in paying benefits to Plaintiff was part of a larger systematic plan to refuse to pay benefits. However, Plaintiff also argues that Defendant stated before the Second Circuit that "[c]onsistent with Hartford Life's claim protocols, the appeal department remanded Plaintiff's claim to the claim department to conduct the initial review of the new documentation and information Plaintiff submitted supporting his claim and to make a determination as to whether Plaintiff met the plan's definition of disability." Pl. Mem. at 4. According to Plaintiff, this protocol, is a systematic claim administration practice in violation of its fiduciary duties. *Id.* Coupling both allegations, and accepting the allegations as true, the Court finds Plaintiff's proposed amendment can plausibly give rise to an entitlement to relief and, therefore, Plaintiff's motion to amend is granted with the following condition.

"Under [ERISA] sections 502(a)(2) and 409(a), plan participants may unquestionably bring actions against plan fiduciaries for breaches of fiduciary duty." *Coan v. Kaufman*, 457 F.3d 250, 257 (2d Cir. 2006). However, as noted by the Supreme Court, such claims may not be made for individual relief but rather they must be "brought in a representative capacity on behalf of the plan." *Russell*, 473 U.S. at 142 n.9; *see also Lee v. Burkhart*, 991 F.2d 1004, 1009 (2d Cir. 1993) (concluding that Russell "bars plaintiffs from suing under [s]ection 502(a)(2) because plaintiffs are seeking damages on their own behalf, not on behalf of the Plan"). In *Coan,* the Second Circuit noted that "although plan participants need not always comply with Rule 23 to act as a representative of other plan participants or beneficiaries, those who do will likely be proceeding in a 'representative capacity' properly for purposes of section 502(a)(2). Similarly, a plan participant who joins or makes a good-faith effort to join other participants as parties pursuant to Rule 19 would seem to have discharged his or her duty to proceed on behalf of the plan. Ultimately, however, the requirement is only that the plaintiff take adequate steps under the circumstances properly to act in a 'representative capacity on behalf of the plan.' " *Coan*, 457 F.3d at 257 (quoting *Russell*, 473 U.S. at 142 n. 9). "An action cannot 'be brought in a representative capacity on behalf of the plan if the plaintiff does not take any steps to become a bona fide representative of other interested parties.' " *DeLeon v. Teamsters Local 802, LLC*, No. 20-CV-24, 2021 U.S. Dist. LEXIS 61446, 2021 WL 1193191, at *8 (E.D.N.Y. Mar. 29, 2021) (quoting *Coan*, 457 F.3d at 259) (dismissing claim for breach of fiduciary duty under ERISA because Plaintiff brought the claim individually rather than on behalf of the plan). Plaintiff here seeks the removal of Defendant as plan fiduciary as a remedy for Defendant's alleged breach of fiduciary duty, however, "to the extent that the Complaint seeks equitable relief, Plaintiff has taken no steps indicating that it has 'discharged [its] duty to proceed on behalf of the plan.' " *Jones v. Aetna, Inc.,* No. 19-CV-9683 (JPO), 2020 U.S. Dist. LEXIS 174440, 2020 WL 5659467 (S.D.N.Y. Sep. 23, 2020) (quoting *Coan,* 457 F.3d at 261 (suggesting that a party bringing a § 502(a)(2) claim may "make[ ] a good-faith effort to join other participants as parties pursuant to Rule 19" or "comply with Rule 23 to act as a representative of other plan

participants"). Going forward, Plaintiff must take steps indicating he plans to proceed with the breach of fiduciary claim on behalf of all plan participants.

***5** Accordingly, Plaintiff is directed to submit a letter to the Court describing the efforts undertaken to become a representative of interested parties within 30 days from the date of this Order. Failure to do so may result in a recommendation to the District Court that Plaintiff's breach of fiduciary claim be dismissed.

All Citations

--- F.Supp.3d ----, 2023 WL 177909

Footnotes

1 In accordance with Judge Seybert's individual rules, all motions to amend are handled by the Magistrate Judge assigned to the case.

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