

2023 WL 7991809

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United States District Court, E.D. Tennessee, Southern Division.

JEFFREY SCOTT SMITH Plaintiff,

v.

**UNUM** LIFE INSURANCE COMPANY OF AMERICA and **UNUM** GROUP, Defendants.

No. 1:21-cv-00294-KAC-CHS

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Filed 09/26/2023

**ORDER ON PLAINTIFF'S MOTION TO SEAL—DOC. 47**

Christopher H. Steger UNITED STATES MAGISTRATE JUDGE

**I. Introduction**

\*1 This matter is before the Court upon the motion to seal filed by Plaintiff [Doc. 47]. Plaintiff has moved to seal information furnished to Plaintiff by Defendant in the course of discovery, which information Plaintiff has filed in support of Plaintiff's Motion to Determine Extent of Deference Given to Unum's Decision [Doc. 43]. Plaintiff moves to seal this information—not because he thinks it should be sealed—but rather because Defendants, Unum Life Insurance Company of America and Unum Group (collectively, “Unum”), have designated this information as confidential. Accordingly, Unum bears the high burden to show why any of the information it has designated as confidential during the discovery process should be filed under seal in the Court's record. [See Court's Memorandum and Order Regarding Sealing Confidential Information, Doc. 5]. In response to the Motion to Seal, Unum filed its Response in Support of Filing Designated Documents Under Seal [Doc. 58] setting forth its reasons to seal some of the information designated as confidential. For the reasons stated herein, the Motion to Seal [Doc. 47] will be **GRANTED IN PART** and **DENIED IN PART**.

**II. Standard of Review**

The standard of review and the burdens of proof the Court must apply in determining whether information filed in the court record can be filed under seal are set forth in this Court's Memorandum and Order Regarding Sealing Confidential Information [Doc. 5] entered on November 30, 2021, and are incorporated herein.

**III. Discussion**

**A. Motion to Seal—Doc. 124**

The following information is the subject of the Motion to Seal filed at Doc. 47:

1. Doc. 48-Main - Plaintiff's Brief in Support of his Motion to Determine Deference
2. Doc. 48-1 - Ex. 8 – Excerpts from Justin Deposition
3. Doc. 48-2 - Ex. 9 – Excerpts from Glover Deposition
4. Doc, 48-3 - Ex. 12 Justin Weekly Tracking Reports with Momentum
5. Doc. 48-4 - Ex. 13 – Justin Weekly Tracking Reports

## 6. Doc. 48-5 - Ex. 15 – Allen LTD Consolidated Operational Summary Reports

The Court will discuss each item *seriatim*.

**1. Plaintiff's Brief in Support of the Motion to Seal - Doc 48-Main**

Unum's response does not address why Plaintiff's brief in support of its Motion to Determine Deference or parts thereof should be placed under seal. Accordingly, Unum has not met its burden to show that this brief or parts thereof should be sealed from the public record. As to this brief [Doc. 48-main], the motion to seal is **DENIED**.

**2. Excerpts from the Justin and Glover Depositions**

Unum states it does “not request sealing exhibits 8 and 9.” (Unum's response at 2, Page ID # 9714). Consequently, as to the excerpts from the Justin and Glover depositions [Docs. 84-1 and 48-2], the motion to seal is **DENIED**.

**3. The Weekly Tracking Reports [Docs. 48-3, 48-4, and 48-5].**

Unum seeks to have placed under seal in their entirety the Weekly Tracking Reports [Doc. 48-3 and 48-4] and the LTD Consolidated Operational Summary Report<sup>1</sup> (Summary Report) on the basis that they contain trade secrets which would compromise Unum's ability to compete in the disability insurance industry if Unum's competitors were to obtain this information. To understand the issues presented by the motion to seal the Weekly Tracking Reports, some background information is necessary. Unum is a large insurance company that enables employers to provide group disability insurance to their workers. Plaintiff had such group disability coverage through his employment. Pursuant to the employer-sponsored welfare benefit plan (“the Plan”) under which Plaintiff's disability policy was issued, Unum functioned both as the administrator of the claim and the payor of the claim. In other words, Unum had responsibility for determining whether a person was disabled within the meaning of the disability policy, and it also had responsibility for paying all approved claims out of Unum's financial reserves. At Unum, Disability Benefits Specialists review disability claims. Disability Benefits Specialists are supervised by a Director who, in turn, is supervised by an Assistant Vice President. Weekly Tracking Reports are available to Assistant Vice Presidents and Directors.

\*2 Unum maintains records on open claims pending as well as claims that were open at one point but which were later denied/concluded. The concluded disability claims are known as *recoveries*. Such information is reflected in the Weekly Tracking Reports. A “momentum” Weekly Tracking Report provides the estimated number of recoveries which will be made in a given reporting period. Plaintiff has submitted these Weekly Tracking Reports provided to Mariann Justin and Michelle Allen, the Assistant Vice President and Director, respectively, assigned to Plaintiff's claim, in support of its contention that Unum was motivated by its own financial interests when it denied Plaintiff's claim. Plaintiff further argues that Unum's own financial interests created a conflict of interest in its claims-handling process and that, for this reason, the Court should apply a higher degree of scrutiny (and, conversely, a lower degree of deference to Unum's decision) when reviewing Unum's decision to deny Plaintiff's claim.

Generally, when a disability policy affords discretion to the plan administrator to pay or deny claims, the Court will review the fiduciary's decision under an arbitrary and capricious standard. *McCatha v. Nat'l City Corp.*, 419 F.3d 437, 441 (6th Cir. 2005). The Plan at issue in this case gives Unum discretionary authority to make benefit determinations. [Doc. 15-1, Page ID # 226]. However, in *Metropolitan Life Insurance Company v. Glenn*, 554 U.S. 105 (2008), the Supreme Court held that where an insurance company has a conflict of interest in administering a disability plan under ERISA, the Court should consider that conflict of interest in deciding whether the plan administrator abused its discretion in denying a claim.

Plaintiff seeks to use the Weekly Tracking Reports and the Summary Report available to Assistant Vice President Justin and Director Allen to demonstrate that Unum's claims review process went beyond the simple administrator/payor structure. More specifically, Plaintiff wants to show that Unum used the Weekly Tracking Reports and Summary Report—along with knowledge of its financial reserves—to set goals for the number of “recoveries” that each Disability Benefits Specialist must complete in a given time period in order to maintain Unum's reserves. Plaintiff further argues that, given this bias in Unum's decision-making, the Court should not apply an “arbitrary and capricious” standard of review to the decision to deny the claim. Rather, the Court should apply some lower level of deference in reviewing Unum's decision.

Unum argues that the Weekly Tracking Reports and Summary Report merely reflect numbers that are consistent with historical figures and an inventory of claims, and do not establish a quota for recoveries. Unum vigorously denies that any claims decisions made by its Disability Benefits Specialists, Directors and Assistant Vice Presidents are influenced in any manner by information in the Weekly Tracking Reports or Summary Reports or by Unum's financial reserves.

The Court notes that a general description of what a Weekly Tracking Report is, and what it contains, is information which is already available in the public domain. *See e.g.*, Terrence J. Coleman, *Disability Insurance Claims in the COVID-19 World*, Plaintiff Magazine, Sept. 2020 and Terrence J. Coleman, *Unum Revisited*, Plaintiff Magazine, Sept. 2016 at 3<sup>2</sup> discussing Weekly Tracking Reports and the type of information in them.

However, the *specific* data metrics in the Weekly Tracking Reports at issue in this case have not been released to the public and Unum contends that doing so would put Unum at a competitive disadvantage if such information were released to the public. In support of this contention, Unum has submitted the affidavit of Senior Financial Analyst Sheila Rodriguez. [Doc. 132-1]. The Court finds the motion to seal as to the Weekly Tracking Reports at issue in this case is well-taken for the following reasons:

- \*3 a. The Weekly Tracking Reports contain non-public operational and/or financial data for Long Term Disability claims that are specific to an Assistant Vice President or Director including information regarding liability acceptance rates for claims, the number and percentages of claims that are reopened, and the numbers and percentages of claims that result in paid recoveries. [Doc. 58-1, Aff. of S. Rodriguez ¶¶ 5-6].
- b. Unum takes considerable precautions to keep the information in the Weekly Tracking Reports confidential and considers it to be proprietary information. These materials are not voluntarily produced by Unum or their subsidiaries in litigation unless they are designated “confidential” and are protected from disclosure outside the confines of a particular lawsuit. In addition, these documents are not disseminated or available to persons outside Defendants' companies. Further, pursuant to Unum's Confidentiality/Non-Disclosure Policy, which is available to all employees through their intranet site, the disclosure or sharing of proprietary information is prohibited. Proprietary information is only to be shared with persons who have a direct “business need to know” with respect to the information. [*Id.* ¶ 8].
- c. Unum has a compelling interest in keeping the information in these documents confidential in order to maintain a competitive edge in the Long Term Disability insurance business. [*Id.* ¶ 7]. Unum is a leader in the LTD insurance business. The market for disability insurance, including LTD insurance that is specifically marketed to employer-sponsored welfare benefit plans, is a competitive one. [*Id.* ¶ 7]. Unum has a business interest in tracking, reporting and analyzing various types of data. The expertise and experience Unum has developed in tracking and reporting data has economic value and gives Unum and its subsidiary insurance companies, including Unum Life, a competitive advantage compared to other companies in the insurance industry. [*Id.* ¶ 7].
- d. While similar information may have been placed in the public record in other cases, none of which provides binding authority, this exact information for this period of time has not. The Court will examine this information on an individual basis as it applies to this case.

- e. The public interest in having the specific data in the Weekly Tracking Reports at issue in this case placed in the public record is outweighed by Unum's compelling interest, as detailed above, to have the information sealed because:
  - i. This action involves only one claim for long term disability; it does not affect a wide spectrum of people such as a class action would.
  - ii. Whether Plaintiff is entitled to benefits is not a matter of public interest; it is a private concern.
  - iii. The public already has access to information which explains in general terms what a Weekly Tracking Report is and who has access to them.
- f. Unum's request to seal these Weekly Tracking Reports is narrowly tailored as the public already has access to information which explains in general terms what a Weekly Tracking Report is and who has access to them and granting this motion effectively seals only the specific data applicable to this case.

Accordingly, the Court concludes Unum's interest in keeping the specific, detailed, comprehensive data found in the Weekly Tracking Reports *at issue in this case* from the public record outweighs the public's right of access. This portion of the Motion to Seal [Doc. 47] is granted.

#### IV. Conclusion

\*4 For the reasons stated herein, it is hereby **ORDERED** that:

- 1. The Motion to Seal [Doc. 47] is **GRANTED IN PART** and **DENIED IN PART** such that:
  - a. Doc. 48-Main, Doc. 48-1, and Doc. 48-2 shall **NOT** be sealed. Within seven days of entry of this Order, Plaintiff shall file said documents in the public record.<sup>3</sup>
  - b. Docs. 48-3, 48-4, and 48-5 (the Weekly Tracking Reports and Summary Report) shall remain under seal.

**SO ORDERED.**

#### All Citations

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#### Footnotes

- 1 The LTD Consolidated Operational Summary report contains metrics similar to the WTR but in a dashboard presentation. [Unum's Response, Doc. 58, Page ID # 9717].
- 2 <https://www.plaintiffmagazine.com/recent-issues/item/disability-insurance-claims-in-the-covid-19-world> discussing weekly tracking reports, “recoveries” and their use by Assistant Vice Presidents. (last visited Oct. 13, 2022) and [https://www.pillsburycoleman.com/News/Published-Works/Coleman\\_Unum-revisited\\_Plaintiff-magazine.pdf](https://www.pillsburycoleman.com/News/Published-Works/Coleman_Unum-revisited_Plaintiff-magazine.pdf) (last visited Oct. 13, 2022), respectively.
- 3 The undersigned notes that the District Judge entered an Order Staying Action on September 19, 2023 [Doc. 68]; however, just as the Stay Order allows the parties to timely file any objections to the Report and Recommendation filed

in this case, it is implicit that it also allows Plaintiff to file Doc. 48-Main, Doc. 48-1, and Doc. 48-2 in the public record pursuant to the terms of this Order.

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