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CLERK U.S. DISTRICT COURT
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

RICHARD CUNNINGHAM,	)	
	)	
Plaintiff,	)	Case No. 4:01-CV-10288
	)	
v.	)	
	)	
ASSOCIATED BENEFITS CORP.,	)	
and UNUM LIFE INSURANCE	)	ORDER
COMPANY OF AMERICA,	)	
	)	
Defendants.	)	

The Court has before it a motion to dismiss filed by Associated Benefits Corporation ("ABC") on June 15, 2001. The plaintiff filed a resistance on July 2, 2001. ABC replied to the resistance on July 17, 2001. The matter is fully submitted.[1]

Meanwhile, defendant UNUM Life Insurance Company of America ("UNUM") filed a motion to dismiss Count III. On July 2, 2001, plaintiff filed a consent to dismissal of this Count without prejudice.

I. BACKGROUND

The following facts are viewed in a light most favorable to plaintiff. Richard Cunningham was an employee of Crestland Cooperative ("Crestland") from May 4, 1967 until August 20,

[1] On July 26, 2001, this Court entered an Order informing plaintiff of the Court's intent to consider the Summary Plan Description in its ruling, thereby converting the motion to a motion for summary judgment pursuant. *See* Fed. R. Civ. P. 12(b)(6). The Court gave plaintiff ten (10) days from the date of that Order in which to file an objection or additional evidence. Plaintiff has not responded to this Order.

Pleading # 20.

1999. Throughout the relevant period, Crestland provided long term disability coverage for its employees through a plan maintained and/or administered by ABC and insured by UNUM. Cunningham was an eligible participant under the Plan.

On or about August 20, 1999, Cunningham became physically unable to work due to chronic health problems which included chronic obstructive pulmonary disease, organic heart disease, brittle diabetes and depression. He applied for and received short term disability benefits directly from Crestland between August 30, 1999 and February 20, 2000.

On February 15, 2000, Cunningham applied for long term disability benefits under the Plan. On March 27, 2000, Cunningham received a letter indicating his application had been denied because UNUM had determined Cunningham did not meet the Plan's definition of disability. On June 27, 2000 Cunningham requested a review of the denial of benefits and submitted to UNUM another letter from his doctor describing his inability to work. On August 29, 2000, UNUM upheld its previous denial, maintaining Cunningham was not disabled under the definition set forth in the Plan. Two further requests for a review of the denial were made and denied. On February 22, 2001, UNUM indicated Cunningham had exhausted his administrative remedies.

On May 7, 2001, Cunningham filed the present ERISA[2] action in this Court, naming both ABC and UNUM as defendants. Count I asserts a claim against ABC for failure to pay benefits under the Plan, Count II asserts the same claim against UNUM, and Count III asserts a cause of

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[2] The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* Plaintiff filed the present action pursuant to 29 U.S.C. § 1132 (a)(1)(B), which authorizes a participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § (a)(1)(B).

action against UNUM for breach of fiduciary duty. As set forth above, plaintiff has consented to a voluntary dismissal of Count III.

In its present motion to dismiss Count I, which this Court has converted to a motion for summary judgment, ABC argue it has fully delegated eligibility determinations to UNUM in accordance with ERISA and is therefore not subject to suit under 29 U.S.C. § 1132.

II. APPLICABLE LAW AND DISCUSSION

A. Motion to Dismiss Standard

In deciding whether to grant a Rule 12(b)(6) motion to dismiss, the Court must not dismiss the claim "unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle plaintiff to relief." *Coleman v. Watt*, 40 F.3d 255, 258 (8th Cir. 1994). A Court must not dismiss a complaint merely because a plaintiff's allegations do not support a particular legal theory he advances. *Laurales v. Desha County School District #4 of Snow Lake*, 632 F.2d 72, 73 (8th Cir. 1980) (citing *Garland v. St. Louis*, 596 F.2d 784, 787 (8th Cir. 1979). Instead, "a Court is under a duty to examine a complaint to determine if the allegations provide for relief on any possible theory." *Id.*

While this standard is decidedly liberal, it requires more than a bare assertion of legal conclusions by the plaintiff, however. *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988). "[T]he complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Scheid*, 859 F.2d at 436, (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

B. Motion for Summary Judgment Standard

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir. 1994). The moving party must establish its right to judgment with such clarity there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. "As to materiality, the substantive law will identify which facts are material . . . . Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

C. Whether ABC is Entitled to Judgment

ERISA provides that named fiduciaries may designate persons "other than the named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan." 29 U.S.C. § 1105(c)(1). Additionally:

> If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or any person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility unless certain circumstances apply.

Id. § 405(c)(2). Accordingly, "'[t]he proper party defendant in an action regarding ERISA benefits is the party that controls the administration of the plan.'" *Layes v. Mead Corp.*, 132 F.3d

1246, 1249 (8th Cir. 1998) (quoting *Garren v. John Hancock Mut. Life Ins. Co.*, 114 F.3d 186, 187 (11th Cir. 1997)). "Unless an employer is shown to control administration of a plan, it is not a proper party defendant in an action concerning benefits." *Daniel v. Eaton Corp*, 839 F.2d 263, 266 (6th Cir. 1988).

As set forth above, ABC contends it has fully delegated eligibility determinations to UNUM in accordance with ERISA, and therefore is not a proper party defendant. *See* Summary Plan Description ("SPD") at 1, Exh. A to ABC's Motion to Dismiss. For example, the first page of the SPD is a letter from UNUM welcoming employees as clients. Paragraph five of this letter reads: "When making a benefit determination under the policy, UNUM has discretionary authority to determine your eligibility for benefits and to interpret the terms and provisions of the policy." SPD at 1. Page 11 states, "How does UNUM define disability? You are disabled when UNUM determines [provision of criteria]." *Id.* at 11. Page 31 of the SPD further indicates the Plan is an insurer administered Plan. *Id.* at 31. All references show UNUM as the sole decisionmaker.

In resisting ABC's motion to dismiss, plaintiff concedes "there are facts which would *support* an argument that ABC has delegated its administrative responsibilities to UNUM," *see* Brief in Support of Resistance at 2 n.1 (emphasis added), but argues that because ABC is listed as the 'Plan Administrator' in the Summary Plan Description ("SPD"), such an issue cannot be resolved summarily. *See* SPD at 30[3] (listing ABC as the name of the Plan, the administrator of the Plan and the agent for service of legal process). This Court does not agree.

The record shows not only that UNUM possessed sole discretionary authority to determine eligibility for benefits, but also that Cunningham, by his actions, acknowledged such

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[3] ABC has submitted the entire SPD in support of its present motion.

authority. Plaintiff states in his Complaint that he submitted the required application forms, medical records, and a physician's statement directly to UNUM. *See* Complaint ¶¶ 10-12. His initial letter of denial came directly from UNUM, *see id.* ¶ 15, and there is no evidence he made any appeals to ABC, or even sought ABC's assistance in pursuing his administrative remedies.[4] Furthermore, plaintiff quotes from a denial letter in which UNUM clearly indicates it had sole discretionary authority to determine disability under the Plan:

> You are disabled when UNUM determines that:
>
> –you are limited from performing the material and substantial duties of your regular occupation due to sickness or injury; and
> –you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.
>
> After 24 months of payments, you are disabled when UNUM determines that due to the same sickness or injury, you are unable to perform the duties of any gainful occupation for which you are reasonably fitted by education, training or experience.

Id. ¶ 18. Although the SPD's designation of ABC as the "plan administrator" is somewhat misleading, based on record as a whole, the Court finds as a matter of law that UNUM possessed full control over decisions regarding eligibility and plan interpretation. Accordingly, ABC is not a proper party defendant to this action.[5]

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[4] Even if ABC or Crestland had tried to intervene on plaintiff's behalf, such a fact would not change the outcome of the present motion unless either actually succeeded in influencing UNUM's eligibility determination. *See Layes*, 132 8th Cir. at 1249-1250 (finding that employer's contacts with insurer/administrator did not did not open up employer to suit under ERISA due to plaintiff's failure to establish that employer influenced administrator's decision).

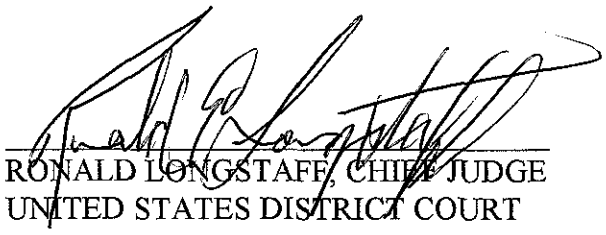
[5] Plaintiff's Complaint in Footnote 1 states, "ABC is designated as the name of the Plan as well as the Plan administrator in the applicable Summary Plan Documents, and this Complaint is intended to reach ABC in both capacities." Complaint at 1 n.1. ABC argues it is not a proper party merely because it and the Plan share the same name. ERISA specifically states, "An employee benefit plan may sue or be sued under this subchapter as an entity." 29 U.S.C.

III. CONCLUSION

For the foregoing reasons, Defendant ABC's Motion to Dismiss Count I is GRANTED. Pursuant to plaintiff's July 2, 2001 consent to dismissal, UNUM's motion to dismiss Count III also is GRANTED.

IT IS SO ORDERED.

Dated this 19th day of October, 2001.



RONALD LONGSTAFF, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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§ 1132(d)(1). However, Plaintiff's statement that ABC has assumed the identity of the Plan and accordingly has opened itself up for suit is not supported.