

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DOREENE MASONHEIMER	:	
Plaintiff,	:	
	:	CIVIL ACTION
	:	
v.	:	NO: 99-CV-5400
	:	
COLONIAL PENN GROUP INC. et al.,	:	
Defendants.	:	

**GREEN, S.J.** **October \_\_\_\_\_, 2000**

**MEMORANDUM and ORDER**

Presently before the court is the Joint Motion to Dismiss of Defendants Colonial Penn Group, Inc., Colonial Penn Insurance Company, and UNUM Life Insurance Company of America, filed pursuant to Fed.R.Civ.P. 12(b)(6), and the Plaintiff's response thereto. For the reasons that follow, the motion will be granted in part and denied in part.

Pursuant to Fed.R.Civ.P. 12(b)(6), a court should dismiss a claim for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232-33 (1984). Because granting such a motion results in a determination on the merits at an early stage of a plaintiff's case, the district court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Twp., 838 F.2d 663, 664-65 (3d Cir.1988), *cert.denied*, 489 U.S. 1065 (1989). In the instant matter, Defendants raise several arguments in support of their motion to dismiss. Essentially, these arguments turn upon whether the Plaintiff's claims are barred by applicable statutes of limitation or by the statutory provisions of ERISA.

Defendants move to dismiss Counts I, II and III of the Plaintiff's Complaint on the ground that ERISA's statute of limitations governing breach of fiduciary duty, 29 U.S.C. § 1113, bars recovery. Pursuant to § 1113, no action for breach of fiduciary duty may be commenced under ERISA (1) after the earlier of six years after the date of the last action which constituted the breach or violation . . . , or (2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation. In support of their motion to dismiss, Defendants argue that the Plaintiff had actual knowledge of the alleged ERISA violation more than three years prior to filing suit. However, Plaintiff asserts that she suffered from a medical condition that prevented her from discovering the ERISA violation. Thus, the question of when the Plaintiff had actual knowledge of the alleged breach or violation is a disputed question of fact. Therefore, Defendants' statute of limitations argument cannot support a dismissal of this matter pursuant to Fed.R.Civ.P. 12(b)(6).

Raising another statute of limitations argument, Defendants move to dismiss Count VI of the Plaintiff's Complaint, asserting that claims brought pursuant to 29 U.S.C. § 1140 are governed by the state's most analogous statute of limitations. Here, Defendants argue that Pennsylvania's two-year limitations period governs Count VI of the Plaintiff's Complaint, and as such, the Plaintiff's claim pursuant to 29 U.S.C. § 1140 is now time barred. If Pennsylvania's two year statute of limitations is applicable, however, which I do not now decide, the court must still decide when the cause of action accrued. In the instant matter, I cannot decide whether Count VI is barred by the applicable statute of limitations on motion to dismiss because the question of when the Plaintiff knew or should have known of the alleged injury is a factual matter in dispute. Therefore, construing the allegations of the complaint in the light most favorable to the Plaintiff in this case, I will not dismiss Count VI at this stage of the proceedings.

Turning now to Defendants' arguments related to ERISA's specific requirements for recovery, Defendants first argue that Count I of the Plaintiff's Complaint should be dismissed because it was inadequately pled. Specifically, Count I of the Plaintiff's Complaint seeks an award of equitable or remedial relief pursuant to 29 U.S.C. § 1132(a)(2). Defendants argue that the Plaintiff should not be allowed to proceed on this claim because Plaintiff cited 29 U.S.C. § 1132(a)(2) as the statutory basis for her recovery and an individual cannot recover under this statutory provision. Defendants are correct in their assertion that Section 1132(a)(2) does not provide a remedy for individual beneficiaries. See Varity Corp. v. Howe, 516 U.S. 489, 515, 116 S.Ct. 1065, 1079 (1996). Therefore, Count I of the Plaintiff's Complaint, in its current state, cannot support an individual claim for recovery under § 1132(a)(2).

Moreover, Count I of the Plaintiff's Complaint does not state a cause of action under which relief could be granted to the extent that Plaintiff seeks an award of civil penalties from her benefit plan under 29 U.S.C. § 1132(c). Our Third Circuit Court of Appeals has held that § 502(c), 29 U.S.C. § 1132(c), provides for personal sanctions against plan administrators for certain breaches of their statutory duties; it does not however, provide sanctions against plans. See Groves v. Modified Retirement Plan for Hourly Paid Employees of the Johns Manville Corp., 803 F.2d 109, 115 (3d Cir. 1986). Therefore, since § 1132(c) authorizes the imposition of sanctions against a plan administrator only for his or her individual actions, not the action of the Plan, Count I, as it relates to the Plan in this case does not state a claim upon which relief can be granted.

In light of the fact that Count I of the Plaintiff's Complaint contains allegations that, in their current state, cannot support a claim for relief, I will dismiss Count I of the Complaint without prejudice to the Plaintiff filing an Amended Complaint, wherein she sets forth an

adequate statutory basis for obtaining the relief she seeks.

In their Motion to Dismiss, Defendants make two additional arguments which require a brief comment. First, Defendants assert that an employer's or plan's failure to comply with ERISA's procedural requirements does not entitle a claimant to a substantive remedy. See Ashenbaugh v. Crucible Inc., 1975 Salaried Retirement Plan, 854 F.2d 1516, 1532 (3d Cir. 1988). Therefore, since Counts I and II of the Plaintiff's Complaint in this case rest upon her allegation that the Defendants failed to comply with ERISA's procedural requirements, they conclude that the present action should be dismissed. In Ashenbaugh, however, the Third Circuit determined that a party may be entitled to a substantive remedy for a plan's failure to comply with ERISA's procedural requirements in some egregious circumstances. See id. Whether such exceptional circumstances are present in this case is a question of fact which cannot be decided on motion to dismiss. Therefore, I will not dismiss Counts I and II of the Plaintiff's Complaint, relating to the failure to comply with ERISA's procedural requirements, at this early stage of the proceedings.

Second, Defendants argue that the Plaintiff's claim for benefits is barred by the suit limitation clause in the long term disability policy. Under the policy, a "claimant or claimant's authorized representative cannot start any legal action . . . until 60 days after proof of claim has been given; nor more than 3 years after the time proof of claim is required." Based on the language contained in the policy, Defendants conclude that the Plaintiff is time barred from maintaining the present action. In certain instances, however, a suit limitation provision may be extended or waived. See Esbrandt v. Provident Life and Accident Insurance Co., 559 F.Supp. 23, 24 (E.D. Pa.1983), *aff'd*, 722 F.2d 731 (3d Cir. 1983). Whether the suit limitations clause was in some way waived or extended in the instant matter is a question of fact that cannot be

decided on motion to dismiss. Therefore, the Defendants motion, as it relates to this issue, shall be denied.

For the reasons articulated above, Count I of the Complaint will be dismissed without prejudice to the Plaintiff filing an Amended Complaint, wherein she sets forth appropriate statutory provisions allowing her to recover for the Defendants' alleged actions. Defendants' Motion to Dismiss all other counts of the Plaintiff's Complaint will be denied. An appropriate Order follows: