

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

TIMOTHY S. RISTER : CIVIL ACTION
 :
 v. :
 :
 NORTHWESTERN MUTUAL LIFE :
 INSURANCE COMPANY : CASE NO. 03-4816

MEMORANDUM AND ORDER

McLaughlin, J.

April 12, 2004

The plaintiff, a chiropractor, has been receiving \$8,000 a month in disability benefits from the defendant since December 1997. He filed this case pro se alleging various and sundry tort and contract claims. The plaintiff does not claim that the defendant is withholding any benefits that are due him. The plaintiff filed an earlier case making almost identical allegations to those made here.

The defendant has made a motion to dismiss the amended complaint, and for sanctions pursuant to Rule 11. The plaintiff has made a motion to add claims. The Court heard oral argument on the various motions on November 20, 2003, and shortly before the oral argument, counsel from the first case entered an appearance on behalf of the plaintiff. The Court discussed all of the issues with counsel and with the plaintiff for almost two hours. The Court incorporates that discussion herein. The plaintiff was present and also made argument to the Court.

At the hearing, the plaintiff withdrew any claims based on the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191, 110 Stat. 1936 or the Gramm-Leach-Bliley Act ("GLB"), Publ. L. 106-102, 1338. The Court dismissed the breach of contract claim for the reasons stated at the hearing. The Court will dismiss all other counts of the amended complaint. Before stating its reasons for doing so, the Court will describe the earlier case and its resolution.

In July 2001, Mr. Rister filed his first suit against NWML. His complaint alleged that the defendant invaded his privacy; breached its fiduciary duty; committed various torts, including intentional and negligent infliction of emotional distress; and breached the insurance contract.

On July 3, 2002, the late Honorable Jay C. Waldman, before whom the case was then pending, dismissed all but the bad faith and invasion of privacy claims. On September 5, 2002, the parties filed a joint stipulation of dismissal without prejudice. The plaintiff then filed a Motion to Grant Class Certification on February 25, 2003, which the Court, to whom the case had by then been transferred, denied because the case had been closed. The Court's Order of March 25, 2003, indicated that the plaintiff had to commence a new action by August 22, 2003, if he wanted to assert class action claims on his two surviving claims.

Mr. Rister filed the present case on August 21, 2003. The first four counts of the six counts in the plaintiff's Amended complaint are substantially identical to the claims the plaintiff made in his earlier case.

The defendant argues that Judge Waldman's decision should be res judicata as to the identical claims that Judge Waldman dismissed. At the same time, the defendant observes in footnote four of its memorandum in support of its motion to dismiss that in this Circuit, the defense of res judicata may not properly be raised by a motion to dismiss unless the basis for the defense appears from the face of the complaint. Iacaponi v. New Amsterdam, Cas. Co., 379 F2d 311, 312 (3d Cir. 1967). In view of the uncertainty as to whether res judicata is applicable here, the Court independently has reviewed the amended complaint and concludes that it must be dismissed.

Count I contains a potpourri of allegations and claims. To the extent Count I alleges a breach of fiduciary duty, it is dismissed because there is no fiduciary duty running from an insurer to an insured under the circumstances alleged here. All claims based on the allegation that somehow the defendant violated the law by attempting to determine whether plaintiff had a mental disability are dismissed. The claim forms submitted by the plaintiff that are referenced in the amended complaint make absolutely clear that the plaintiff was claiming some sort of

mental problems. The plaintiff claims that a suggestive letter was sent to Dr. Michaels, without describing the letter. This allegation does not state a claim. At the hearing, it became clear that this allegation is based on pure speculation. The plaintiff does not have any evidence that any suggestive letter was sent to Dr. Michaels. Count I will be dismissed on its entirety with prejudice.

Count II appears to allege defamation, invasion of privacy, and putting the plaintiff in a false light. That Count is dismissed because the plaintiff has failed to identify any allegedly defamatory remark made by the defendant or to whom the remark was published. Nor are there sufficient allegations to sustain an allegation that the defendant's actions put the plaintiff in a false light. With respect to the invasion of privacy claim based on an allegation that a private investigator surveilled the plaintiff on or about January 6, 1999, it is beyond the statute of limitations. The plaintiff concedes this. We are left with the mere allegation in the amended complaint that surveillance continued up to the present. At the hearing, the Court questioned the basis for that allegation so that the Court could decide whether to allow the plaintiff to replead that claim with more specificity. The Court learned that there is no evidence that the defendant surveilled the plaintiff after the January 1999 date. The basis of the plaintiff's view that the

surveillance occurred up until the present is that an unknown car was seen at the bottom of the plaintiff's driveway. There is absolutely no basis to connect that car to the defendant.

At the hearing, in an attempt to allay what appeared to the Court to be the plaintiff's irrational fears that the defendant was placing him under surveillance, the Court requested the defendant to provide to the plaintiff an affidavit to the effect that they were not surveilling the defendant. Counsel for the defendant so stated at the oral argument. Such an affidavit has been provided. The Court is convinced that there would be no basis for the plaintiff to replead this invasion of privacy claim. It is dismissed with prejudice.

Count III contains separate claims for intentional infliction of emotional distress, negligent infliction of emotional distress, intentional and unintentional misrepresentation, and wrongful interference with contract. Pennsylvania courts and Judge Waldman in the first action have rejected claims of intentional infliction of emotional distress in actions involving alleged conduct by an insurer toward an insured. None of the plaintiff's factual allegations are sufficient to state a claim for intentional infliction of emotional distress. Nor is there sufficient basis in the amended complaint for negligent infliction of emotional distress. The plaintiff does not set forth the defendant's alleged

misrepresentations that form the basis of the intentional misrepresentation claim. Because the defendant is a party to the insurance policies, it cannot be held liable for wrongful interference with the contract rights. All these claims are denied with prejudice.

The Court dismissed on the record at the hearing Count IV that alleges a breach of contract.

Count V fails to state a claim. Count V of the amended complaint is based on a letter dated January 7, 2003, from Northwestern Mutual to the plaintiff. The plaintiff claims that the letter effectively waives the defendant's right to enforce the provision of the policy that requires that the plaintiff be under the regular care of a licensed physician. The Court has read the letter carefully and discussed it with counsel and Dr. Rister and the letter cannot be read as a waiver of any rights by the defendant.

Count VI is dismissed because there is no obligation on the insurance company to buy out the plaintiff's policy. This was also discussed at length at the hearing.

As to the motion to add claims, the plaintiff has withdrawn his claims under the HIPAA and GLB. The Court will deny the motion to add an invasion of privacy claim based on the defendant's submission of certain of the plaintiff's medical reports to the Court. For the reasons stated in the defendant's

opposition to the motion, there has not been "an unreasonable and serious interference with [the plaintiff's] privacy interest." Moses v. McWilliams, 379 Pa. Super 150, 159, 549 A.2d 950, 955 (Pa. Super. 1988).

Although the defendant has made some strong arguments for sanctions against the plaintiff, the Court will not grant them at this time. The Court is very sensitive to the fact that the plaintiff filed these papers pro se and that he obviously suffers from some mental problems. He admitted as much at the oral argument and asked the Court to take that into consideration. The Court will take that into consideration and deny the motion. The Court, however, will not be able to ignore any further misstatements of fact by this plaintiff.

An appropriate Order follows.

