

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

ALAN TANNENBAUM, M.D. :
 :
 : CIVIL ACTION
 :
 v. :
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 UNUM LIFE INSURANCE : NO. 03-CV-1410
 COMPANY OF AMERICA, :
 ET AL. :

SURRICK, J.

MARCH 18, 2005

MEMORANDUM & ORDER

Presently before the Court is the Motion of Defendants UNUM Life Insurance Company of America and UnumProvident Corporation (“UNUM”) to Dismiss Plaintiff’s Claim for Emotional Distress Damages in Count V of the Second Amended Complaint (Doc. No. 17). For the following reasons, Defendant’s Motion will be denied without prejudice.

I. BACKGROUND

Plaintiff Alan Tannenbaum, M.D. purchased a private long-term disability policy (“ID Policy”) issued by Defendant UNUM Life. (Second Am. Compl. ¶¶ 22-23.) During his employment as a pediatrician with Einstein Community Health Associates (“Einstein”), Dr. Tannenbaum also became a participant in Einstein’s employee welfare benefits plan, which included short-term disability (“STD”) and long-term disability (“LTD”) policies. (*Id.* ¶ 27.) Plaintiff alleges that Defendants failed to pay him certain disability benefits that he was due under these policies after a traumatic injury ended his career.

On December 1, 2000, Plaintiff was involved in a motor vehicle accident. (*Id.* ¶ 30.) As a

result of the accident, Plaintiff suffered serious personal injuries which required surgery. Plaintiff “underwent a posterior cervical fusion of C3, C5, an open reduction of the C4-C5 fracture and dislocation, and a right iliac crest bone graft.” (*Id.* ¶ 31.) In January of 2001, Plaintiff returned to his work as a pediatrician at Einstein while he continued to receive conservative treatment and physical therapy. (*Id.* ¶ 33-34.) On or about April 1, 2001, Plaintiff ceased working as a pediatrician because he determined that he could no longer perform his duties in a professional manner. (*Id.* ¶ 37.) Plaintiff then contacted UNUM to apply for disability benefits, but was incorrectly advised that he could not apply for benefits until after the policies’ elimination period. (*Id.* ¶ 38.) Based on this incorrect information, Plaintiff was not provided a benefit application until on or about June 6, 2002. (*Id.* ¶ 39.) At or about the same time, Plaintiff completed the application. (*Id.*) When the UNUM Defendants received Plaintiff’s claim under his private ID Policy, they forwarded it to their Worcester, Massachusetts Orthopedic Unit (“Worcester Ortho”) (*id.* ¶ 40), which approved his claim. (*Id.* ¶ 43.) They sent Tannenbaum’s STD and LTD claims to their Portland, Maine Orthopedic Unit (“Portland Ortho”) (*id.* ¶ 40), which made an early decision to deny these claims. (*Id.* ¶ 42.) Plaintiff alleges that Portland Ortho then sought to terminate his claim under the ID Policy and to deny his STD and LTD claims through various fraudulent pretexts. (*Id.* ¶¶ 46-47.)

Plaintiff alleges that, in an attempt to increase profits, Defendants structured their claims processing operation “to expose its insureds, such as Dr. Tannenbaum, to arbitrary denial of claims, to excessive and unreasonable delay in the investigation, review and payment of claims, as well as to increase the financial pressure upon such insureds to accept less than fair value for their claims.” (*Id.* ¶¶ 62, 64.) Plaintiff alleges that, as a part of this plan, Defendants failed to conduct

an appropriate investigation regarding the merits of his disability claims. (*Id.* ¶¶ 48-51.) Several months after Plaintiff filed his Complaint, Defendants reversed their earlier denials of Plaintiff’s disability claims “on the grounds that Dr. Tannenbaum suffered from a mental-based disability.” (*Id.* ¶ 73.) Plaintiff asserts that Defendants had no reasonable basis for concluding that he had such a mental-based disability. (*Id.* ¶ 74.) Plaintiff avers that Defendants made a strategic calculation to treat his claim as one for mental-based disability in order to limit his coverage. (*Id.* ¶ 75.)

Plaintiff brings this action against the UNUM Defendants and Albert Einstein Healthcare Foundation for relief pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 28 U.S.C. § 1001, and Pennsylvania state law. While Plaintiff’s Second Amended Complaint contains seven counts, the UNUM Defendants’ Motion to Dismiss only focuses on Count V, which alleges breach of the covenant of good faith and fair dealing.¹ In that claim, Plaintiff alleges that he suffered various damages, including emotional distress, as a result of Defendants’

conspiracy to terminate Dr. Tannenbaum’s ID benefits claim through the creation of fraudulent pretexts, their failure and/or delay in investigating and paying legitimate claims that defendants knew are due and owing without reasonable basis, and their subsequent attempt after suit was initiated to place Dr. Tannenbaum ‘on claim’ for mental-based disability without reasonable basis

(Second Am. Compl. ¶ 93.) Defendants seek dismissal of Plaintiff’s claim for emotional distress damages.

¹Plaintiff did not raise this claim against Defendants in his original Complaint or his Amended Complaint. (See Doc. Nos. 1, 2.)

II. LEGAL STANDARD

When considering a Rule 12(b)(6) motion to dismiss, we must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party.” *Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989). The court may dismiss a complaint only if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *H. J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). When considering a motion to dismiss, we need not credit a plaintiff’s “bald assertions” or “legal conclusions.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1429-30 (3d Cir. 1997)).

III. LEGAL ANALYSIS

Defendants’ Motion focuses on the narrow issue of whether Plaintiff may recover emotional distress damages for a breach of the covenant of good faith and fair dealing. Under Pennsylvania law, implicit in every insurance contract “is the principle that an insurer owes a contractual duty of good faith and fair dealing to its insured.” *Galman Group v. Am. Safety Indemnity Co.*, Civ. A. No. 03-4563, 2004 U.S. Dist. LEXIS 8447, at *6 (E.D. Pa. May 5, 2004) (citing *Dercoli v. Pa. Nat’l Mut. Ins. Co.*, 554 A.2d 906, 909 (Pa. 1989)); *see also* Restatement (Second) of Contracts § 205 (1981).² Therefore, the breach of this covenant arises as a claim for breach of contract rather than a claim in tort. *See, e.g., Galman Group*, 2004 U.S. Dist. LEXIS

²The Restatement (Second) of Contracts § 205 provides that “[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.” Restatement (Second) of Contracts § 205 (1981).

8447, at *7; *Falbo v. State Farm Life Ins. Co.*, Civ. A. No. 96-5540, 1997 U.S. Dist. LEXIS 2687, at *18-19 (E.D. Pa. Mar. 13, 1997).

Ordinarily, emotional distress damages are not recoverable for breach of contract. *Novick v. UnumProvident Corp.*, Civ. A. No. 01-CV-258, 2001 U.S. Dist. LEXIS 9735, at *2 (E.D. Pa. July 10, 2001) (citing *Krisa v. Equitable Life Assurance Co.*, 109 F. Supp. 2d 316, 323 (M.D. Pa. 2000)); *see also* Restatement (Second) of Contracts § 353 cmt. a (1981) (“Damages for emotional disturbance are not ordinarily allowed.”). However, there is no per se rule against the recovery of emotional distress damages for a breach of contract. Rather, a plaintiff may recover such damages if: (1) the breach of contract caused bodily harm; or (2) the contract or breach “is of such a kind that serious emotional disturbance was a particularly likely result.” Restatement (Second) of Contracts § 353 (1981)³; *see Novick*, 2001 U.S. Dist. LEXIS 9735, at *2 n.3; *Birth Ctr. v. St. Paul Cos., Inc.*, 787 A.2d 376, 385-86 (Pa. 2001)⁴; *D’Ambrosio v. Pa. Nat’l Mut. Cas. Ins. Co.*, 431 A.2d 966, 970 n.5 (Pa. 1981).

Despite the difficulty that Plaintiff will face in recovering emotional distress damages under his breach of contract theory, we will allow him to proceed with the claim at this juncture.

³The Restatement (Second) of Contracts § 353 specifically provides that “[r]ecovery for emotional disturbance will be excluded unless the breach also caused bodily harm or the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result.” Restatement (Second) of Contracts § 353 (1981).

⁴In *Birth Center v. St. Paul Companies, Inc.*, the Supreme Court of Pennsylvania held that emotional distress damages may be recoverable for breach of contract. The court explained that “[t]he purpose of damages in contract actions is to return the parties to the position they would have been in but for the breach.” *Birth Ctr.*, 787 A.2d at 385 (quoting *Gedeon v. State Farm Mut. Auto. Ins. Co.*, 188 A.2d 320, 322 n.5 (Pa. 1963)). Thus, “where an insurer acts in bad faith, the insured is entitled to recover such damages sufficient to return it to the position it would have been in but for the breach.” *Id.*

A district court may only grant a motion to dismiss if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *H. J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). Plaintiff’s Second Amended Complaint alleges facts sufficient to support the claim. We cannot tell at this stage in the proceedings whether the asserted contract or breach was of the kind that is particularly likely to result in serious emotional disturbance to Plaintiff.⁵ Although we harbor some doubt about Plaintiff’s ultimate ability to recover emotional distress damages in this case, dismissal of the claim now would be premature. Therefore, we deny Defendants’ Motion without prejudice so that we may revisit this issue at the appropriate time.

An appropriate Order follows.

⁵Plaintiff does not allege that Defendants’ alleged breach caused him bodily harm.

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| ET AL. | : | |

ORDER

AND NOW, this 18th day of March, 2005, upon consideration of the Motion of Defendants UNUM Life Insurance Company of America and UnumProvident Corporation to Dismiss Plaintiff's Claim for Emotional Distress Damages in Count V of the Second Amended Complaint (Doc. No. 17, No. 03-CV-1410), and all papers submitted in support thereof and in opposition thereto, it is ORDERED that Defendant's Motion is DENIED without prejudice.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge