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

GERALD E. KOLLMAN	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	NO. 03-2944
HEWITT ASSOCIATES, LLC;	:	
ROHM AND HAAS COMPANY;	:	
and	:	
ROHM AND HAAS BENEFITS	:	
ADMINISTRATIVE COMMITTEE	:	
Defendants	:	

MEMORANDUM

Baylson, J. **October 18, 2005**

I. Introduction

This case arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001, et seq. Plaintiff, Gerald E. Kollman, contends that Defendants, Hewitt Associates, LLC; Rohm and Haas Company; and the Rohm and Haas Benefits Administrative Committee ("BAC") violated the duties and responsibilities imposed by ERISA and the terms of the Rohm and Haas Retirement Plan ("the Plan") by failing to provide requested information to Plaintiff.

In a prior Memorandum dated August 11, 2005, the Court granted in part and denied in part various motions for summary judgment, ruling that Plaintiff's claims for damages under the theories of equitable estoppel and breach of fiduciary duty were not cognizable under ERISA, but also ruling that Count I of Plaintiff's Complaint, seeking statutory penalties and attorneys fees for Defendants' alleged refusal to provide documents required under ERISA, warranted a trial.

Plaintiff's Count I seeks to recover, under Section 1132(c) of ERISA, which permits a court, in its discretion, to award a statutory penalty of up to $100.00 per day against a plan administrator who fails or refuses to comply with a request for information that the administrator is required under ERISA to produce. Upon consideration of the testimony and exhibits presented at a non-jury trial on August 24, 2005, the Court now makes the following findings of fact and conclusions of law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

II. Findings of Fact

Plaintiff testified at trial to a lengthy chronology of his interaction with Defendants concerning his employment with Defendant Rohm and Haas Company ("R&H") from 1972 to December 31, 2002. Many of the facts testified to by Plaintiff were received by the Court, both with and without objection, but related exclusively to Plaintiff's claims for damages, which the Court had previously dismissed. Nonetheless, this testimony was relevant to some extent because it set a backdrop for the requests for documents, which are the issue presented by Count I.

The Court found Plaintiff to be a credible witness in all respects. However, the Court will limit its findings to those facts relevant on the issue presented by Count I. As will be seen from these findings, the Court believes that some background is relevant because it sheds light on Defendants' knowledge of Plaintiff's concerns and contentions, and was appropriately admitted in Plaintiff's effort to prove that Defendants' refusal to produce documents was knowing and intentional, which although not a requisite of the statute, are factors which some courts have found relevant in determining the amount of sanctions to impose.

A summary of the pertinent facts follows.

1. During Kollman's employment, R&H offered to its employees a retirement plan known as the Rohm and Haas Company Retirement Plan ("Plan"). (Plaintiff's Exhibit ("P-9") 9, D00001-134).

2. Section 15.7.4 of the Plan provides in the event of an adverse benefit determination:

> The Claimant or his representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claim. (P-9, D00054-55).

3. The Plan incorporates the definition of "relevant" information from the definition set forth in DOL Reg. §2560.503-1(m)(8). (Id.).

4. Pursuant to an Administrative Services Agreement ("Contract") between R&H and Defendant Hewitt Associates, LLC ("Hewitt"), R&H outsourced to Hewitt virtually all of the administrative services for, inter alia, the Plan, including the R&H Pension Plan. (P-26, p. 7-8; P-19, D00496-566).

5. Hewitt acted as a non-fiduciary "administrator" and/or agent of the "administrator" of the Plan and performed the day-to-day administration including, *inter alia*, maintaining all of the records and calculating the participant's retirement benefits. (P-26, p. 9; P-27, p. 51, 119; P-19, D00496-566).[1]

6. During Kollman's employment and thereafter, Hewitt was responsible for calculating proper pension benefits for R&H's employees. (P-27, p. 154-156).

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[1]Exhibit P-26 is an excerpt from the F.R.Civ.P. 30(b)(6) deposition of Patricia Coyle, Esq, a Rohm and Haas attorney. Defendants' attempt to use an errata sheet to change her deposition is rejected as too substantive in nature. Defendants did not call her at trial, despite an opportunity to do so. Defendants objection to plaintiff's excerpts are overruled.

7. On January 10, 2003, Kollman e-mailed the Human Resources department at R&H explaining how he relied upon the pension benefit calculation of $522,043.30 in deciding to retire, only to learn that his reliance was premised upon Hewitt's allegedly incorrect statement of the lump sum benefit, but the response from R&H was only an acknowledgment that the e-mail was received. (N.T., p. 29, ln. 9-21; P-4).

8. After receipt of Kollman's January 10, 2003 email, R&H conducted an investigation of the reduction of Kollman's pension benefits. (P-19, D00569-577, D00581-589).

9. During its investigation, R&H and Hewitt reviewed the following items: (a) the tape recordings of Kollman's telephone conversations with Hewitt; (b) the call history; (c) the computerized notes relating to Kollman's calls and use of the computer system; and (d) a summary of the restructuring of the AgroFresh business. (P-19, D00573-574, D00576, D00577, D00582).

10. That investigation generated e-mails between Hewitt and R&H concerning what was discovered and what had happened with Kollman. (P-19, D00573-582).

11. During the January 2003 investigation, Hewitt confirmed that Kollman was given "misleading" information in the paperwork given to him, regarding his pension benefits, and recommended that R&H and/or Hewitt pay the difference. (P-19, D00569, D00576, D00573-74; D00584, D00586).

12. E-mails between their personnel in January of 2003 indicate that both R&H and Hewitt wanted to "avoid an appeal". (P-19, D00570, D00574).

13. On February 13, 2003, Kollman filed a "R&H Company Health and Group Benefits Claim Initiation Form", the form mailed to him by Hewitt to initiate an appeal from the

reduction of his lump sum retirement benefit. (N.T., p. 29, ln. 22-24; P-9, D00388-391).

14. By letter dated March 5, 2003, Christopher Derocher, a Retirement Plans Specialist, informed Kollman that his appeal was denied because the Plan required proper application of the QDRO and the Plan rules did not permit payment of any additional funds. (N.T., p. 31, ln. 2-12; P-6).

15. When the appeal was denied, Kollman had not specifically asked for, and did not have a copy of the Plan or the Summary Plan Description, and they were not provided to him. (N.T., p. 30, ln. 16-20).

16. Before R&H denied Kollman's appeal, by letter dated February 18, 2003 ("February 2003 Request"), counsel for Kollman requested Hewitt to produce the following things to assist Kollman in the prosecution of his appeal:

a. All tape recordings of telephone calls between Mr. Kollman and Hewitt from December 1, 2002 through the present;

b. All available printouts of or electronically stored data on benefits projections for Mr. Kollman from October 1, 2002 through the present;

c. All documents of any nature which relate, reflect or refer the QDRO adjustment to Mr. Kollman's benefits whenever such documents were generated, created or stored;

d. All pension benefits paperwork generated by Hewitt for Mr. Kollman in December of 2002 and January 2003, including any drafts thereof;

e. All internal communications and documents, including electronic mail, which relate, reflect or refer to Mr. Kollman or his benefits which have been generated by Hewitt from December 1, 2002 through the present; and

f. All communications between Hewitt and Rohm & Haas which relate, refer or reflect to Mr. Kollman of his benefits. (N.T., p. 30, ln. 8-15; Defendants' Answer to the Amended Complaint, ¶27; P-5).

17. On February 20, 2003, Hewitt forwarded the February 2003 Request to the BAC of R&H. (P-20, D00597).

18. At the time that Hewitt and R&H received the February 18, 2003 request for information, R&H and Hewitt had reviewed: (a) the recordings and computerized notes relating to Kollman's telephone conversations with Hewitt (P-19, D00573-574, D00576, D00577, D00582); (b) the electronically stored data relating to Kollman's pension benefits. (P-19, D00573-574, D00576, D00577, D00582); and (c) the information relating to the QDRO adjustment. (P-19, D00573-574, D00576, D00577, D00582).

19. Although Kollman requested those documents, Hewitt, which created and stored those documents, failed to respond to the February 2003 Request, before the appeal was denied, and did not produce those documents. (P-27, p. 64, 66).

20. Hewitt did not respond to the February 2003 Request until March 20, 2003 when it declined to produce any documents whatsoever and suggested that Department of Labor Regulations required that Kollman request documents from the R&H plan administrator. (N.T., p. 30, ln. 21-p. 31, ln. 5; P-7).

21. Hewitt did not gather the requested information or respond to the February 2003 Document Request. (P-27, p. 58).

22. Hewitt had knowledge that Kollman was seeking the information described in the February 2003 Request. Hewitt made no specific effort to maintain that information. (P-27, p. 84).

23. Hewitt's March 20, 2003 letter was carbon copied to Kara Gordon, Esquire. (P-7).

24. R&H refers all requests for information submitted by a participant's attorney, including Kollman's February 2003 Request, to its internal legal department. (P-26, p. 55-56).

25. Kara Gordon, Esquire, an attorney in R&H's legal department, was responsible for handling and responding to Kollman's requests for information, including the Kollman's February 2003 Request. (P-26, p. 56-58).

26. Ms. Gordon never requested Hewitt to maintain or preserve any documents relating to Kollman. (P-27, p. 84).

27. At Hewitt's direction, by letter dated April 28, 2003 ("April 2003 Request"), Kollman's counsel requested directly from R&H "all documents, records, and other information relevant to [Kollman's] claim for benefits", including the same information requested in the February 2003 Request. (N.T., p. 32, ln. 7-10; Defendants' Answer to the Amended Complaint, ¶31; P-8).

28. At the time that R&H received the April 28, 2003 Request, R&H knew that Derocher and other members of R&H reviewed or generated the following documents during the January 2003 investigation prior to preparing the March 5, 2003 denial letter: (a) the recordings and computerized notes relating to Kollman's telephone conversations with Hewitt; (b) the electronically stored data relating to Kollman's pension benefits; (c) information relating to the QDRO adjustment; and (d) the internal communications and memoranda created by the Hewitt and R&H employees. (P-19, D00573-574, D00576, D00577, D00582).

29. R&H failed to respond to the April 2003 Request within thirty days.

30. Kollman commenced this lawsuit against Hewitt on May 5, 2003.

Despite prompt receipt of the February 2003 Request and the April 2003 Request, R&H

took no action to gather the requested information from its record keeper until June 10, 2003. (P-20, D00610; P-27, p. 55).

31. On June 26, 2003, Linda Doyle, Esquire (outside counsel for Defendants before new counsel was substituted in August 2004) produced documents to Plaintiff's lawyer that were the Plan, the latest updated Summary Plan Description ("SPD") and the "administrative record" to date for Plaintiff's claim. (N.T. 33-36 and P-9). That administrative record included the Severance Benefit Program ("SMP") Agreement received and signed by Plaintiff in December 2002 (P-9 at D00397-409 and N.T. 64-65); "Starting Your Pension Benefit" paperwork dated December 19, 2002 that Plaintiff had not received at that time (P-9 at D00426-455 and N.T. 27); and a July 1999 pension estimate (P-9 at D00461-467) that Plaintiff requested and received in July 1999 (N.T. 68-69).

32. Other than the January 2003 pension paperwork received by Plaintiff in January 2003 and the December 2002 draft pension paperwork (not sent at that time to Plaintiff) (but included in the June 26, 2003 production), there are no other documents responsive to request no. 4 in the February 18, 2003 letter (P-5) and the April 28, 2003 letter (P-8). (N.T. 60-61).

33. In a July 10, 2003 letter to the BAC, Plaintiff filed his appeal of the March 5, 2003 claim denial. (N.T. 37 and P-10). Plaintiff attached to his July 10, 2003 letter (P-10) the June 26, 2003 letter from Defendants' outside counsel Linda Doyle (P-9).

III. Discussion

Plaintiff seeks to recover under the statutory penalty provision of ERISA. Section 1132(c)(1)(B) provides that:

> Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $ 100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

29 U.S.C. § 1132(c)(1)(B).[2] This provision authorizes courts to impose sanctions on plan administrators for failing to fulfill their disclosure obligations imposed by 29 U.S.C. §§ 1001-1145. See Groves v. Modified Retirement Plan for Hourly Paid Employees of Johns Manville Corp. & Subsidiaries, 803 F.2d 109, 113 (3d Cir. 1986) (affirming district court's decision denying participant's request for sanctions against administrator).

Defendants do not dispute that § 1024 of ERISA imposes a duty to furnish certain information to a plan participant such as Plaintiff. Rather, Defendants contend that Plaintiff failed to comply with the statute's requirement that requests for such information must specifically ask for the documents by name. In addition, Defendants argue that § 1132 sanctions are not available for disclosure violations of 29 U.S.C. § 1104. For the following reasons, the Court finds that the Plaintiff has proven by a preponderance of the evidence that his attorney's written request for information was sufficiently clear to comply with ERISA's notice

[2] In this case, the fact that Plaintiff's counsel sent the written requests is not relevant. See Daniels v. Thomas & Betts Corp., 263 F.3d 66, 77 (3d Cir. 2001) ("A representation by an attorney that he is making a request on behalf of a participant or beneficiary triggers the duty to respond under § 1024(b)(4) when the administrator has no reason to question the attorney's authority.") There is nothing in the record that indicates Defendants questioned the authority of Plaintiff's counsel.

requirements under 29 U.S.C. § 1024(b)(4), however, plaintiff is not entitled to recover the statutory penalty for alleged violations of §1104.

As noted in the August 11, 2005 Memorandum, the Third Circuit has made it clear that, as a penal statute, Section 1132 "should be leniently and narrowly construed." Groves, 803 F.2d at 111, 118. Thus, in Groves, the Third Circuit held that § 1132 sanctions are not available against a plan administrator for failure to fulfill duties that are 1) imposed only by regulations, id. at 113, 117; or 2) imposed only upon plans. Id. at 111, 113-16. With Groves in mind, this Court must evaluate Plaintiff's claim for sanctions, which is premised on the allegation that Defendants failed to produce documents required by 29 U.S.C. § 1024(b)(4) and § 1104(a)(1)(D).

A. Section 1024(b)(4)

Section 1024(b)(4) provides:

> The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.

29 U.S.C. § 1024(b)(4). To establish a violation of the statute, a plaintiff must show: 1) there was a written request; 2) the request was made to the administrator; and 3) the administrator failed to respond to that request within thirty (30) days thereof. See Porcellini v. Strassheim Printing Co., 578 F. Supp. 605, 612 (E.D. Pa. 1983) (entering judgment in favor of employee and against employer and awarding damages for employer's failure to deliver information requested by employee under ERISA). Moreover, because the statutory penalty is "clearly punitive in nature," a plan participant need not show that he was prejudiced by the administrator's delay. Further, even if the request is not made directly to the Plan administrator, if the evidence shows it

was forwarded to and received by the administrator, the statutory requirements have been met. Id. at 613-14; see also Gillis v. Hoechst Celanese Corp., 4 F.3d 1137, 1148 (3d Cir. 1993) (holding that "harm need not be shown"); Deboard v. Sunshine Mining & Ref. Co., 208 F.3d 1228, 1244 (10th Cir. 2000) ("neither prejudice nor bad faith is required for a district court to impose penalties under 29 U.S.C. § 1132(c)).[3]

As to whether Plaintiff must specifically name the precise documents he was seeking, and although there is no controlling Third Circuit case on the subject, several circuit and district courts have adopted the "clear notice" test for information requests under ERISA.

> A written request for documents under § 1024(b)(4) implicates the penalty provision of § 1132(c)(1) only if the request gives the administrator "clear notice" of exactly what information is sought. See Faircloth v. Lundy Packing Co., 91 F.3d 648, 655 (4th Cir. 1996), cert. denied, 117 S. Ct. 738 (1997). Thus, when a participant "fails to make a specific request for the information at issue, he has no litigable claim under [§ 1132(c)]." Williams v. Caterpillar, Inc., 944 F.2d 658, 667 (9th Cir. 1991).

Brooks v. Metrica, Inc., 1 F. Supp. 2d 559, 567 (E.D. Va. 1998) (granting employee's motion for summary judgment); see also Anderson v. Flexel, Inc., 47 F.3d 243, 248 (7th Cir. 1995) (holding that a request for documents under § 1024(b)(4) necessitates a response from an administrator when it gives the administrator "clear notice" of the information sought).[4]

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[3]Nor does a request under §1024(b)(4) necessarily need to be specifically directed to the plan administrator when, as here, the request did reach R & H and the personnel responsible for responding to ERISA information requests. See Romero v. SmithKline Beecham, 309 F.3d 113, 119 (3d Cir. 2002) (holding that requests for information need not be sent directly to plan administrator).

[4]In addition to the Fourth, Seventh, and Ninth Circuits, the Second, Fifth, and Tenth Circuits have also adopted the "clear notice" test. See Davenport v. Harry N. Abrams, Inc., 249 F.3d 130, 135 (2d Cir. 2001); Fisher v. Metropolitan Life Ins. Co., 895 F.2d 1073, 1077 (5th Cir. 1990); Moothart v. Bell, 21 F.3d 1499, 1503 (10th Cir. 1994). However, many of these courts have also limited its application to prevent its abuse. See infra.

District court cases requiring "clear notice" include Serpa v. SBC Telecommunications, Inc.,

There are some cases cited in the footnote below which support Defendants' argument that because Plaintiff did not specifically ask for any of the specific documents mentioned and required under § 1024(b)(4), the penalty provision of § 1132(c)(1) is not implicated. However, many courts adopting the "clear notice" test have also limited its application and potential abuse by defendants and have suggested that a request for information under §1024 "need not ask for specific documents by name, and an administrator cannot use such technical considerations as an excuse for its failure to respond." See Hess v. Hartford Life and Accident Ins. Co., 91 F.Supp.2d 1215, 1224 (C.D. Ill. 2000), aff'd, 274 F.3d 456 (7th Cir. 2001); see also Anderson v. Flexel, Inc., 47 F.3d 243, 248-50 (7th Cir. 1995)(noting that "an administrator's knowledge of surrounding circumstances or the information being requested may require a response to an otherwise general request"); Fisher v. Metropolitan Life Insurance Co., 895 F.2d 1073, 1077 (5th Cir. 1990) ("Nothing in either the request or the response indicates that [defendant] knew or should have known that [plaintiff] had requested a copy of any document relating to the . . . plan."); Bartling v. Fruehauf Corp., 29 F.3d 1062, 1071 (6th Cir. 1994) (finding that a requirement that a beneficiary must ask for a document by name rather than description is contrary to the spirit of §1024(b)(4)); Boone v. Leavenworth Anesthesia, Inc., 20 F.3d 1108, 1111 (10th Cir. 1994) (holding that the court must view a request in its entirety and consider defendant's understanding of it).

2004 U.S. Dist. LEXIS 27240 at *9-10 (N.D. Cal. 2004) (granting motion to dismiss amended complaint because sole written request for documents was pre-litigation general request for disclosure of "all employment, pension . . . documents relating . . . to [plaintiff's] election to retire. . . ."); Lumenite Control Tech., Inc. v. Jarvis, 252 F. Supp. 2d 700, 710 (N.D. Ill. 2003); Dall v. Chinet Co., 33 F. Supp. 2d 26, 34 (D. Me. 1998); Curry v. Contract Fabricators, Inc. Profit Sharing Plan, 744 F. Supp. 1061, 1066 (M.D. Ala. 1988), aff'd , 891 F.2d 842 (11th Cir. 1990).

In this case, Plaintiff's request was sufficiently specific, asking for all documents relating to application of his QDRO, considering the background of communications between Plaintiff and Defendants. Because both the Plan and the SPD detail the effects of a QDRO on an employee's pension benefit, and because of prior communications with Plaintiff, Defendants knew or should have known, based on their knowledge of the surrounding circumstances or the nature of the information being sought, that Plaintiff was, at the very least, requesting copies of these documents.

Because Plaintiff has proven by a preponderance of the evidence that these documents are required to be provided under §1024(b)(4), and Defendants failed to provide them within thirty (30) days of the request, Defendants are subject to the penalty under §1132(c). This finding comports with "Congress' purpose in enacting the ERISA disclosure provisions -- ensuring that 'the individual participant knows exactly where he stands with respect to the plan.'" Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 118 (1989)(quoting H. R. Rep. No. 93-533).

Based on the testimony and exhibits at trial, I conclude that Defendant BAC violated the express obligations imposed by §1024(b)(4) of ERISA and is therefore, subject to the discretionary statutory penalty under §1132(c)(1).

When deciding whether to impose a penalty, the court can appropriately consider 1) bad faith or intentional conduct of the plan administrator, 2) length of delay, 3) number of requests made, 4) documents withheld, and 5) prejudice to the participant. Romero v. Smith Kline Beecham, 309 F.3d 113, 120 (3d Cir. 2002)(reversing summary judgment for the plan administrator on the employee's claim for delays in responding to the employee's information requests).

The Court finds that the Defendants acted intentionally in failing to provide the requested documents. The delay from February 18, 2003 to June 26, 2003 amounts to a delay of ninety-eight (98) days, more than triple the time permitted under the statute. There were at least two written requests dated February 18, 2003 and April 28, 2003, which were prior to the start of litigation. See Ames v. American Nat'l Can Co., 170 F.3d 751, 759 (7th Cir. 1999) (noting that "if litigation comes along, then ordinary discovery rules under the management of the district court provide the limits on what must be produced").[5] The documents withheld constitute the most basic and informative documents subject to ERISA disclosure requirements. ERISA requirements mandate that a fiduciary have procedures in place so that compliance with document requests is timely. Defendants did not meet these requirements.

Finally, even though prejudice is not dispositive, see Porcellini, 578 F. Supp. at 613-14, Plaintiff was prejudiced by the delay because he could not assess the merits of his claim without them. In fact, it was not until after Plaintiff commenced this suit that Defendants provided the documents. Based on the foregoing factors, this Court concludes that the Plaintiff is entitled to the $100.00 per day authorized under §1132(c)(1) for Defendants' failure to provide documents

[5]This Court distinguishes the Plaintiff's pre-litigation requests, dated February 18, 2003 and April 28, 2003, from the post-litigation requests, dated July 10, 2003, November 17, 2003, December 11, 2003, August 6, 2004, September 9, 2004, and February 22, 2005. The post-suit requests are not strictly ERISA requests and are more appropriately subject to discovery rules. Thus, they should be considered differently. However, Defendants' June 2003 response to Plaintiff's February and April 2003 requests, which were pre-litigation, would be governed by ERISA principles. See Sedlack v. Braswell Servs. Group, 134 F.3d 219, 226 (4th Cir. 1998) (affirming penalty imposed by district court where plaintiff's first request for documents was made prior to litigation, second request was not made until discovery was underway, and the requested documents were only produced after a hearing on plaintiff's motion to compel because "nothing in the statute requires that more than one request be made before penalties may be imposed"). Therefore, this Court rejects Defendants' argument that the February and April 2003 requests were merely "informal, pre-litigation discovery that the should lead the court to exercise its discretion to deny ERISA civil penalties," citing Serpa v. SBC Telecomms., Inc., 2004 U.S. Dist. LEXIS 27240 (N.D. Cal. 2004)(granting defendants' motion to dismiss).

requested under §1024(b)(4).

B. Section 1104(a)(1)(D)

Plaintiff also seeks to recover under § 1132 for alleged violations of 29 U.S.C. § 1104(a)(1)(D). Section 1104 states, in relevant part:

> § 1104. Fiduciary duties
> (a) Prudent man standard of care.
> (1) Subject to sections 403(c) and (d), 4042, and 4044 [29 USCS §§ 1103(c), (d), 1342, 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--
> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

29 U.S.C. § 1104(a)(1)(D). Plaintiff reasons that because §1104(a)(1)(D) requires a plan administrator to comply with the terms of the Plan, and because the R&H Plan provides that a claimant is entitled to copies of "all documents, records and other information relevant to the claim" (Plan at 48-49), a failure to produce "relevant" documents required under the Plan necessarily amounts to a violation of §1104 and therefore, exposes the administrator to the statutory penalty under § 1132(c)(1). This Court disagrees. In Groves, the Third Circuit instructed that § 1132 should be construed narrowly. The connection that Plaintiff suggests between § 1104 and § 1132 is too attenuated for this Court to conclude that the plan administrator should be exposed to the statutory penalty under § 1132 for failing to fulfill disclosure obligations imposed by a Plan, and not ERISA specifically. Such a holding would be contrary to Groves.

Furthermore, §1104 addresses the plan administrator's fiduciary duties. Although this

includes a duty to disclose information to plan participants and beneficiaries, see Jordan v. Federal Express Corp., 116 F.3d 1005, 1015 (3d Cir. 1997) (affirming dismissal of employee's claims except claim of breach of fiduciary duty), claims alleging violations of a fiduciary duty to inform are treated differently from violations of ERISA's reporting and disclosure requirements. Id. at 1014. Relevant case law indicates that the remedy for such fiduciary violations of §1104 is § 1132(a)(3), not § 1132(c)(1). See id. See also Horvath v. Keystone Health Plan E., Inc., 333 F.3d 450, 455 (3d Cir. 2003)(affirming grant of summary judgment in favor of defendant); Weiss v. Cigna Healthcare, Inc., 972 F. Supp. 748, 754 (S.D.N.Y. 1997) ("The general fiduciary obligations set forth in ERISA § 404 do not refer to the disclosure of information to Plan participants, and it would be inappropriate to infer an unlimited disclosure obligation on the basis of general provisions that say nothing about such duties.") (internal citations and quotations omitted). Thus, Plaintiff would only be entitled to equitable relief under section 1132(a)(3). See Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 209-10 (2002)(affirming decision that beneficiaries are only entitled to equitable relief under § 1132(a)(3)). See also Mertens v. Hewitt Associates, 508 U.S. 248, 255 (1993) (holding that appropriate equitable relief does not include compensatory or punitive damages). Plaintiff has made no appropriate requests for equitable relief. Therefore, this Court concludes that Plaintiff is not entitled to the statutory penalty under § 1132(c)(1) for Defendants failure to produce "relevant" documents.

C. Attorney's Fees

Plaintiff has requested an award of attorney's fees. Section 1132(g)(1) provides that "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132 (g)(1). The Third Circuit has articulated five policy factors for district courts to

consider when determining whether a prevailing party is entitled to attorney's fees under ERISA:

1) the offending parties' culpability or bad faith;
2) the ability of the offending parties to satisfy an award of attorneys' fees;
3) the deterrent effect of an award of attorneys' fees against the offending parties;
4) the benefit conferred on members of the pension plan as a whole; and
5) the relative merits of the parties' position.

Ursic v. Bethlehem Mines, 719 F.2d 670, 673 (3d Cir. 1983)(affirming attorney fee awarded to plaintiff under ERISA). Considering these factors, the Court concludes that a partial award of attorney's fees to Plaintiff in this case is proper. First, the Court finds that the Defendants deliberately stonewalled the Plaintiff when providing information regarding the Plan, even though Plaintiff was only claiming he had a right to the correct pension estimate generated from the Hewitt website. Defendants have no good excuse. Second, there is no evidence to suggest that Defendants would be unable to satisfy an award of attorney's fees limited and attributable to Count I. Third, an award of attorney's fees "will deter Plan administrators from denying Plan documents to other former employees," Henczel v. Amstar Sugar Corporation, 1991 U.S. Dist. LEXIS 10740 at *14 (E.D.Pa. 1991), and "will serve to emphasize the importance of the administrator's prompt response to a request for information to which plan participants and beneficiaries are entitled." Porcellini, 578 F. Supp. at 616. Fourth, even though this action did not seek to benefit all participants of the R&H Plan, "an award of attorney's fees in this case may help to avoid other beneficiaries in the future from being placed in a similar situation." Id. at 616. Finally, the merits of Plaintiff's position, as outlined above, support a partial award of attorney's fees limited to Count I.

VII. Conclusions of Law

1. This Court maintains jurisdiction in this matter under 28 U.S.C. § 1331, through the operation of various provisions of ERISA.

2. The court has jurisdiction over the parties and venue is properly laid in this Court pursuant to 28 U.S.C. § 1391(b)(2), as it is a judicial district in which a substantial part of the events giving rise to the claims occurred.

3. On February 18, 2003 and April 28, 2003, Plaintiff, through his counsel, made a proper written request to Rohm and Haas Benefits Administrative Committee for information required to be furnished under 29 U.S.C. § 1024(b)(4).

4. The BAC was at that time, and remains, the administrator of the Rohm and Haas Retirement Plan.

5. The written request satisfied the statutory requirement that a written request be made to the plan administrator.

6. The request itself, and in the context of prior communications between Plaintiff and Defendants, was sufficiently clear to give the BAC notice that Plaintiff was requesting the Plan and the Summary Plan Description, even though Plaintiff's request did not use these specific terms.

7. The response to Plaintiff's request was not completed until June 26, 2003, in violation of 29 U.S.C. § 1132(c) and ninety-eight (98) days late.

8. The BAC, as administrator of the plan, is liable to Mr. Kollman in the amount of $100.00 per day from March 20, 2003, which is thirty (30) days after the request was properly made, to June 26, 2003, the date that the requested documents were delivered. This amounts to ninety-eight (98) days for the sum of $9800.00.[6]

9. The Plaintiff is entitled to reasonable attorney's fees and expenses pursuant to 29 U.S.C. § 1132 (g) as a prevailing party on Count I only.

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[6]At oral argument, counsel for Defendants assured the Court that Rohm and Haas Company would be responsible for any judgment against the BAC.

An appropriate Order follows.

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

GERALD E. KOLLMAN	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-2944
HEWITT ASSOCIATES, LLC, et al.	:	

ORDER

AND NOW, this 18th day of October, 2005, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows:

1. The Court finds in favor of the Plaintiff and against Defendant Rohm and Haas Company and BAC in the amount of $9,800.00, representing $100.00 per day from March 20, 2003 to June 26, 2003, pursuant to 29 U.S.C. 1132(c).

2. Judgment is entered in favor of Plaintiff and against Defendant Rohm and Haas in the amount of $9,800.00. Judgment is entered in favor of Defendant Hewitt Associates, LLC and against Plaintiff.

3. Plaintiff is entitled to reasonable attorney's fees pursuant to 29 U.S.C. 1132(g) as to Count I only. If the parties are unable to reach an agreement on the amount, Plaintiff shall submit, within twenty (20) days of this Order, a petition for counsel fees together with a detailed affidavit of the amount of hours, the applicable rate and any other facts claimed relevant as to Count I of this action. Defendant shall have fourteen (14) days from the date of the Plaintiff's submission to file objections. Plaintiff may file a reply brief within seven (7) days.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.

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