

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

Robert Thornton	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 05-5244
	:	
Broadspire,	:	
United Parcel Service, Inc, and	:	
UPS Health and Welfare Package,	:	
Defendants	:	

**MEMORANDUM**

Green, S. J

February 8th, 2006

Presently pending before the Court is Defendants’ Motion to Dismiss pursuant to Federal Rules of Civil Procedure (F.R.C.P.) 12(b)(1) and 12(b)(6), and Plaintiff’s Answer to Defendants’ motion. For the following reasons, Defendants’ Motion to Dismiss is granted, in part and denied, in part.

**FACTS:**

Plaintiff an employee of Defendant United Parcel Service (UPS), claims to have subscribed for short and long-term benefits insurance under the UPS Health and Welfare Package (the “Plan”). Plaintiff claims to have paid all premiums, through UPS, as required under the disability insurance. On or about March 23, 2004 Plaintiff claimed disability due to a diagnosis of a herniated disc of the cervical spine and lumbar spine, carpal tunnel syndrome as well as pre-existing degenerative disease. Defendant Broadspire, the administrator of the Plan, provided Plaintiff with short-term disability benefits (STD.)

Plaintiff applied for long-term disability benefits (LTD) with Broadspire, when the STD expired. Broadspire denied Plaintiff’s claims for LTD. Plaintiff appealed to the Claims Review

Committee (the “Committee”), which constituted his second appeal. Plaintiff was denied LTD on appeal. The Committee’s letter dated March 11, 2005, stated that his appeal was rejected since the claim allegedly constituted a work-related injury which was not covered by the Plan. The Committee offered to reassess Plaintiff’s claims if his Workers Compensation claim was denied. Plaintiff’s Workers Compensation claim was denied on June 10, 2005. In accordance with the Committee’s instructions Plaintiff reapplied for LTD and was granted payment for LTD from January 21, 2005 to April 15, 2005, but was denied LTD benefits until January 21, 2005 and after April 15, 2005. Plaintiff then filed a Complaint and Amended Complaint against Broadspire, UPS and the Plan for breach of contract pursuant to ERISA Section 502(a)(1)(b).

### **MOTION TO DISMISS**

#### **I. LACK OF SUBJECT MATTER JURISDICTION:**

Defendants contend that Plaintiff’s claim should be dismissed for lack of subject matter jurisdiction for failure to exhaust administrative remedies. A complaint may be dismissed for lack of subject matter jurisdiction pursuant to F.R.C.P. 12(b)(1). District courts have original jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States. See 28 U.S.C. § 1331. “Except in limited circumstances... a federal court will not entertain an ERISA claim unless the plaintiff has exhausted the remedies available under the plan.” Weldon v. Kraft, Inc., 896 F.2d 793, 800 (3d Cir. 1990) citing Wolf v. National Shopmen Pension Fund, 728 F.2d 182, 185 (3d Cir. 1984). In considering a motion to dismiss for lack of subject matter jurisdiction, “the person asserting jurisdiction bears the burden of showing that the case is properly before the Court at all stages of the litigation.” Packard v. Provident Nat’l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993.) Defendants assert that since Plaintiff has claims

pending before the Plan administrator, Plaintiff has not exhausted all his administrative remedies.

In accordance with ERISA's claims procedures, the Plan provides a two-step administrative review process for claims denials. Plaintiff's request for LTD was denied on November 15, 2004. His first level appeal was denied on January 17, 2005. Plaintiff appealed the denial and was again rejected by the Committee on March 11, 2005. Plaintiff hence followed the steps of the administrative review process. The administrative review procedure does not include a reassessment of Plaintiff's claim if Workers Compensation denies his claim. In fact, the Committee recognized that Plaintiff had exhausted his appeals and stated, in the letter dated March 11 2005, that the denial was the Committee's final decision. The letter further stated that Plaintiff had the "right to bring a civil action in federal court in accordance with ERISA Section 502(a)." Plaintiff's decision to pursue his claim with the Plan, after workers compensation denied him benefits, does not bar his suit in federal court. Therefore, the Court concludes that Plaintiff exhausted his administrative remedies and Defendants' Motion to Dismiss Plaintiff's claim for failure to exhaust administrative remedies will be denied.

## II. FAILURE TO STATE A CLAIM

Defendants also assert that Plaintiff's claim should be dismissed, pursuant to F.R.C.P. 12(b)(6), for failure to state a claim upon which relief can be granted. A court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Swierkiewicz v. Sorema N.A., 122 S.Ct. 992, 998 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73; 104 S. Ct. 2229 (1984)). The court "must take all the well pleaded allegations as true and construe the complaint in the light most favorable to the plaintiff." Colburn v. Upper Darby Twp., 838 F. 2d 663, 665-

66 (3d Cir. 1988). The U.S. Supreme Court addressed the liberal pleading standards set forth in Fed. R. Civ. P. 8(a)(2), by stating that the F.R.C.P. only requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” Swierkiewicz 122 S. Ct. at 998-999. The Supreme Court further noted that the statement of facts must simply “give the defendant fair notice of what the Plaintiff’s claim is and the grounds upon which it rests.” Id at 998. (quoting Conley v. Gibson, 355 U.S. 41, 47, 76 S.Ct. 99 (1957)). Only notice pleading is required even when it may appear on the face of the pleadings that a recovery is very remote and unlikely. See Swierkiewicz at 997-998. “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” Id. at 997 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (U.S. 1974)) The Supreme Court further stated that the standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. Id at 998. The pleading standard is a liberal one and was adopted to focus litigation on the merits of a claim. Id at 999. Therefore, F.R.C.P. 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits.

Defendants Broadspire and UPS assert that under ERISA a claim can only be brought against the Plan. Defendants assert that only UPS Health and Welfare Package is a proper defendant in the suit. Defendants hence argue that the claims against Broadspire and UPS should be dismissed. The Third Circuit has held that ERISA permits suits to recover benefits against the Plan as an entity and against the fiduciary of the Plan. Curcio v. John Hancock Mut. Life Ins. Co. 33 F.3d 226, 233 (3d Cir,1994.)

It is undisputed that UPS Health and Welfare Package is the plan. UPS Health and Welfare Package is therefore a proper party in this matter. ERISA makes clear that a fiduciary is

one who maintains discretionary authority or discretionary responsibility in the administration of the Plan. Id at 234. Broadspire's letter to the Plaintiff, dated November 15, 2004, admits that Broadspire is the claims administrator. As the claims administrator Broadspire makes claims determinations. At this time, on a motion to dismiss, viewing the facts in the light most favorable to Plaintiff, Broadspire exerted discretionary authority in the administration of the Plan, and may be a fiduciary under ERISA. Therefore, the claims against Broadspire will not be dismissed. While it may be that claims against the Defendants are without merit, it would be premature at this stage in the litigation to decide issues such as fiduciary relationships, other evidentiary issues for the causes of action, or dismiss the claims against the Defendant without permitting the parties an opportunity to engage in discovery regarding liability.

There is no allegation in the Amended Complaint that UPS was involved in the granting of claims or in the adjudication of appeals. Plaintiff has not alleged any actions by UPS that constitute an exercise of discretionary authority or responsibility in the administration of the Plan. Consequently, UPS cannot be considered a fiduciary of the Plan under ERISA. Since UPS is not the Plan or the Plans's fiduciary, the claims against UPS will be dismissed.

An appropriate order follows.

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	:	
Broadspire,	:	
UPS, and	:	
UPS Health and Welfare Package,	:	
Defendants	:	

**ORDER**

Presently pending before the court is Defendant's Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and Plaintiff's Answer to Defendant's Motion. **AND NOW**, on this \_\_\_\_\_8th\_\_\_\_\_ day of February 2006, after consideration of Plaintiff's Complaint, Defendants' Motion to Dismiss and Plaintiff's Answers in Opposition, **IT IS HEREBY ORDERED** that:

1. Defendants' Motion to Dismiss the claim against UPS is **GRANTED**.
2. Defendants' Motion to Dismiss the claim against Broadspire is **DENIED**.
3. Defendants' Motion to Dismiss the claim against UPS Health and Welfare Package is **DENIED**.

**BY THE COURT**

**S/ CLIFFORD SCOTT GREEN  
CLIFFORD SCOTT GREEN, S.J.**