

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

JACQUELINE ADDIS	:	CIVIL ACTION
	:	
v.	:	No. 05-357
	:	
THE LIMITED LONG-TERM DISABILITY PROGRAM	:	
	:	

MEMORANDUM OPINION

Savage, J.

August 3, 2006

Plaintiff, who prevailed in this action brought pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) for long term disability benefits, has moved for an award of attorney’s fees and costs. The Limited Long-Term Disability Program (“Limited”), while continuing to challenge entitlement to benefits, opposes any award of attorney’s fees, contending they are inappropriate in this case, would be punitive and would result in Limited refraining from reconsidering the denial of benefits in future claims. It also argues that the fee sought is excessive.

After considering and balancing the *Ursic* factors, I find that the plaintiff is entitled to counsel fees. However, fees for representing the plaintiff in the administrative process and the social security proceedings will not be approved.

Attorney’s Fees Under ERISA

Under ERISA, reasonable attorney’s fees and costs may, but need not be, awarded the prevailing party. 29 U.S.C. § 1132(g)(1). There is no presumption that a successful party is entitled to attorney’s fees. *Ursic v. Bethlehem Mines*, 719 F.2d 670, 673 (3d Cir.

1983). Before a prevailing party may be awarded fees, the court must balance and weigh five policy factors: (1) the losing party's culpability or bad faith; (2) the ability of the losing party to satisfy an award of fees; (3) the deterrent effect of an award of fees; (4) the benefit conferred on members of the pension plan as a whole; and, (5) the relative merits of the parties' respective positions. *Ursic*, 719 F.2d at 673. These are not requirements that must be satisfied, but rather elements that must be considered. *Fields v. Thompson Printing Co.*, 363 F.3d 275 (3d Cir. 2004).

Pursuant to this mandate, I shall consider each *Ursic* factor and assess whether the plaintiff, Jacqueline Addis ("Addis"), is entitled to fees. If so, then I must determine whether the hours and the rates requested are reasonable.

Culpability or Bad Faith

The first *Ursic* factor considers bad faith or culpability of the losing party. Of course, a determination of bad faith weighs heavily in favor of an award of attorneys fees. But, the prevailing party is not required to demonstrate that the losing party acted in the traditional sense of bad faith, that is, with an ulterior motive or sinister purpose. *McPherson v. Employees' Pension Plan of Am. Re-Ins. Co.*, 33 F.3d 253, 256 (3d Cir. 1994). Instead, it is sufficient to show that the losing party engaged in conduct beyond negligence, such as the breach of a legal duty or commission of fault, though not necessarily malicious. *McPherson*, 33 F.3d at 256-57. In short, culpability is less than bad faith and more than mere negligence.

Merely because it did not prevail does not render the losing party culpable. However, a finding of arbitrariness implies culpability. Whenever a plan's denial of disability benefits is reversed by the court, there is necessarily culpability because the

plan's decision could not have been disturbed unless it was arbitrary and capricious. Indeed, the administrator's decision must be upheld unless it was "without reason, unsupported by substantial evidence or erroneous as a matter of law." *Abnathya v. Hoffmann-La Roche, Inc.*, 2 F.3d 40, 45 (3d Cir. 1993). Therefore, in a case where a denial of disability benefits is reversed by the district court, the first *Ursic* factor, culpability, is always in favor of the prevailing claimant.

In this case, Limited's decision was arbitrary and capricious, and was not supported by substantial evidence. In addition, the administrative process was affected by procedural bias. The flaws in Limited's decisionmaking process and the reasons the decision was arbitrary and capricious are discussed in detail in *Addis v. Limited Long-Term Disability Program*, 425 F. Supp. 2d 610, 616-20 (E.D. Pa. 2006).

For example, Limited deliberately chose to accept, without explanation, the opinions of the non-specialist it had hired over those of the specialist who had treated Addis, it selectively relied on portions of the record favorable to its position while ignoring parts that did not, and its own medical reviewer did not conclude that Addis could perform the duties of her "own occupation," the plan's controlling test. These findings demonstrate culpability, though not bad faith, on the part of Limited. Thus, the culpability factor weighs in favor of an award of attorney's fees.

Ability to Satisfy Award of Fees

Limited argues that an award of fees will reduce its assets. Although this argument may be literally true, it must be placed in the proper context. The plan is funded by Limited Brands Inc. Employee Benefits Trust "as sponsored by Limited Service Corporation" on behalf of the plan. Limited Service Corporation is a "support business" of Limited Brands

Inc.¹ Limited Brands Inc. is a multinational company which had \$9.7 billion in revenue in fiscal 2005 and net income of nearly \$683 million.² It is obvious that paying Addis's fees and costs will not affect Limited's financial position. To say that an award of fees will have an impact is a gross exaggeration. Accordingly, the second factor does not weigh against an award of fees.

Deterrent Effect

In weighing the deterrence factor, the court looks not only to bad faith conduct but to any behavior that should be avoided in the context of achieving ERISA's objectives. *McPherson*, 33 F.3d at 258. Fees are not intended to punish, only to encourage fairness.

Limited insists that an award of fees will have no deterrent effect because it will continue to examine claims in the same manner it did in this case. Defiantly, Limited warns that if fees are awarded, it will take a more aggressive stance when considering requests to re-open appeals, as it had done in Addis's case, suggesting that it will not reconsider denials.

Limited's obstinance reinforces the need to deter future inadequate administrative reviews. The denial of benefits was inconsistent with the medical evidence available to Limited. Limited inexplicably credited the sparse medical review prepared by its non-specialist over Addis's own treating specialist's reports. An award of fees should encourage Limited to give more than cursory consideration to a claimant's treating specialist's opinions when its own medical reviewer is not a specialist in the field and offers

¹ <http://limited.com/about/index.jsp>.

² http://www.limitedbrands.com/investor/financial_performance/financials.jsp.

a vague opinion that is not dispositive of the claimant's ability to do her job as defined in the plan. Hence, this factor favors slightly an award of fees.

Benefits Conferred on Other Plan Members

Addis sought reinstatement of her own benefits. She did not bring the action to change the Limited's decisionmaking process for the benefit of other plan participants. However, other participants may benefit indirectly because Limited is now on notice that its review policies should assure that future claims are given adequate and fair consideration of all factors and not just those that favor the plan. This indirect effect is neither significant nor substantial. Thus, while this factor does not favor a fee award, it does not weigh against one.

Relative Merits

Like the culpability factor, the relative merits component always weighs in favor of the prevailing claimant for disability benefits because she could only have been successful if the plan administrator's decision had been arbitrary and capricious.³ However, unlike culpability, relative merits considers the losing party's position relative to the prevailing plaintiff's. The question is not whether, but how much, this factor weighs in favor of the prevailing party. When it is clear, as is the case here, that consideration of the five *Ursic* factors favors an award of attorney's fees, it is unnecessary to quantify how much the

³ The ERISA statute authorizes nine types of civil actions that may be brought by different classes of parties. 29 U.S.C. § 1132(a). The attorney's fee provision, 29 U.S.C. § 1132(g), applies to all actions brought under the statute and not only actions brought to recover benefits. Not all ERISA actions are treated similarly on judicial review. A plan's decision denying disability benefits is accorded deferential treatment while other determinations in other ERISA actions are not. Consequently, the *Ursic* analysis varies to the extent that some factors take on more significance and have more impact on the result depending on the type of action.

For example, cases where a pensioner's eligibility for benefits or the amount of benefits due may be subject to reasonable debate and the ultimate decision is a close call. In successful actions to recover disability benefits, on the other hand, the losing party, the plan, has acted arbitrarily and capriciously.

relative merits weigh in favor of the prevailing party.

Four of the five *Ursic* factors weigh in favor of a fee award. The remaining factor does not weigh for or against a fee award. Thus, after considering each of these factors separately and in relationship to each other, the balance weighs in favor of an award of attorney's fees.

Rate and Hours Requested

Addis seeks approximately \$62,000 in fees and costs. Limited does not question the hourly rates of the attorneys and assistants who worked on the case, but it does challenge all time spent during pre-litigation administrative proceedings and some time spent in the federal litigation. Once the fee is challenged, the court considers only those objections raised by the objecting party. *United States v. Eleven Vehicles*, 200 F.3d 203, 212 (3d Cir. 2000). It may, in its discretion, adjust it downward. *Id.*

Determining the reasonableness of the requested fee requires a two part analysis. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). First, the court must determine the number of hours that were reasonably expended. *Id.* Second, it must decide the reasonable hourly rate. *Id.* Once these two numbers are established, they are multiplied to yield the lodestar, which is presumed to be a reasonable fee. *Washington v. Philadelphia County Court of Common Pleas*, 89 F.3d 1031, 1035 (3d Cir. 1996).

The attorney must specify the tasks and the time spent on each in sufficient detail to enable the court to determine if the fee is reasonable. *Id.* at 1037. The specificity need only be enough to show that the hours claimed are not unreasonable. *Rode v. Dellarciprete*, 892 F.2d 1177, 1190 (3d Cir. 1990); see also *Inferfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 426 F.3d 694, 703 n.5 (3d Cir. 2005). At a minimum, the fee petition

should include “fairly definite information as to the hours devoted to various general activities” *Rode*, 892 F.2d at 1190 (quoting *Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973)).

Hours Expended

Limited objects to several itemized time entries on the grounds that they are excessive, redundant and unnecessary. Some work was not necessary and some time was excessive. Thus, the fee requested shall be reduced accordingly.

The court may deduct hours which are excessive, duplicative or unnecessary. *Hensley*, 461 U.S. at 434. If the task took more time than is reasonably necessary, the time is excessive. *Hall v. Borough of Roselle*, 747 F.2d 838, 841-42 (3d Cir. 1984). In assessing the reasonableness of the fee sought, the court must “decide whether the hours . . . were reasonably expended for each of the particular purposes described and then exclude those that are ‘excessive, redundant, or otherwise unnecessary.’” *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1995) (quoting *Hensley*, 461 U.S. at 433-34).

Limited objects to hours spent researching issues it claims that an attorney versed in ERISA would not have had to spend. Researching the viability of state law claims, the discovery available in ERISA cases, the damages recoverable, the exhaustion of administrative remedies and the impact of a favorable social security decision on ERISA litigation was unnecessary because these fundamental issues are well established and familiar to an ERISA attorney. These entries, dated December 13, 2004, January 24, 2005, March 16, 2005, March 21-24, 2005, April 4, 2005, June 24, 2005, and June 28, 2005, totaling \$5,027.50, are disallowed.

Limited objects to the hours spent on supplemental briefs that were not required. The supplemental briefs reiterated issues previously raised by Addis and were redundant. Likewise, communications with the Court regarding the filing of motions, case status and court procedure are not recoverable because they were unnecessary. Thus, the entries of January 24-26, 2000, February 28, 2006, and March 1-2, 2006, totaling \$1,087 will not be allowed.

Despite Limited's objections to the fees associated with the confusion over the identification of the proper defendant in this action and the fees and costs associated with the stay pending appeal, Addis's counsel is entitled to them. The parties were initially confused whether MetLife was the proper defendant. Although defense counsel could have clarified this issue at the outset, it took six months from the filing of the initial complaint to conclude that Limited, and not MetLife, was the proper defendant. The time spent on this issue was a legitimate expense.

The hours expended on the voluntary stay are permissible. The issue was instigated by Limited, which sought counsel's consent. The stay, which delays Limited's payment obligations, benefits Limited and not Addis.

Administrative and Social Security Proceedings

Whether fees incurred during the underlying administrative process are recoverable in an ERISA case has not been addressed by the Third Circuit. The Ninth Circuit has decided that they are not. See *Cann v. Carpenters' Pension Trust Fund for N. Cal.*, 989 F.2d 313, 315-17 (9th Cir. 1993). The Ninth Circuit interpreted language "in any action" in the attorney's fee provision as meaning a suit brought in court. *Cann*, 989 F.2d at 316. Addis argues this interpretation is overly restrictive, citing lower court decisions which have

criticized the Ninth Circuit's decision. As Judge Pollak of this court has explained, if the Third Circuit did permit the award of fees incurred during the administrative process, the decision whether to compensate counsel would be left to the discretion of the district court. *Brown*, 2005 WL 1949610, at *4.

Without deciding whether fees associated with the administrative process are recoverable as a general rule, I conclude that, in this case, they will not be awarded. Had Addis been successful at the administrative level, she would not have been entitled to attorney's fees. Though exhaustion of the administrative process is a prerequisite to the filing of an action in the district court, it is distinct from the federal litigation. Thus, Limited will not be required to pay Addis's fees and costs incurred at the administrative level.

Likewise, Addis's request for fees and expenses incurred during the social security proceedings are not recoverable. They were not necessary to the recovery of benefits from Limited.

Addis contends, however, that there is a benefit to Limited from her successful social security claim because Limited is able to offset the monthly social security payments Addis receives and she paid her attorney out of the lump sum she received. Nevertheless, she did not seek social security benefits for Limited, but for herself. She would have pursued social security benefits regardless of her ERISA claim.

Addis entered into a private fee agreement with counsel for the social security proceedings. The fee paid counsel for representation during the social security proceedings was not for any work done on the ERISA claim. Thus, the fees and expenses incurred during the social security proceedings will not be allowed.

Conclusion

Addis is entitled to an award of attorney's fees reduced by time spent unnecessarily. Limited will not be required to compensate her attorney for work performed in the administrative and social security proceedings. Thus, the plaintiff shall be awarded \$596.96 in costs and \$43,901.00 in attorneys' fees.⁴

⁴ Addis is entitled to interest pursuant to 28 U.S.C. § 1961 as a matter of course under ERISA. *Skretvedt v. E.I. DuPont De Nemours*, 372 F.3d 193, 208 (3d Cir. 2004).

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ORDER

AND NOW, this 3rd day of August, 2006, upon consideration of the Motion for Attorney's Fees Filed By Plaintiff Jacqueline Addis Pursuant to 29 U.S.C. § 1132(g) (Document No. 37), the defendant's response and the plaintiff's reply, it is **ORDERED** that the motion is **GRANTED**.

IT IS FURTHER ORDERED as follows:

1. Plaintiff's counsel is awarded \$43,901.00 for attorney's fees and \$596.96 for litigation expenses; and,
2. Defendant shall pay pre-judgment interest and post-judgment interest, calculated according to the standard set forth in 28 U.S.C. § 1961.

TIMOTHY J. SAVAGE, J.