

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

MARK ABRAMOWICZ : CIVIL ACTION
 :
 v. :
 :
 ROHM AND HAAS COMPANY : NO. 00-4645

MEMORANDUM AND ORDER

HUTTON, J.

October 30, 2001

Presently before this Court is Defendant Rohm and Haas Company's Motion for Summary Judgment (Docket No. 8), Plaintiff Mark Abramowicz's Cross-Motion for Summary Judgment (Docket No. 15), Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment (Docket No. 24), and Plaintiff's Sur-Rebuttal in Support of Plaintiff's Cross-Motion for Summary Judgment (Docket No. 25). For the foregoing reasons, Defendants' Motion for Summary Judgment is **GRANTED** and Plaintiff's Cross-Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

On September 19, 2000, Mr. Abramowicz filed a Complaint alleging a one-count breach of contract claim based on diversity of citizenship jurisdiction. On October 2, 2000, Mr. Abramowicz amended his Complaint, alleging a one-count Employment Retirement Income Security Act ("ERISA") claim based on federal question

jurisdiction. The Defendant filed its Answer and Affirmative Defenses on December 5, 2000.

Plaintiff's Amended Complaint alleges a single-count ERISA violation, under 29 U.S.C. § 1001 et. seq., which incorporates a breach of contract claim. Specifically, Plaintiff claims that the Defendant breached the terms and conditions of an employment contract, and arbitrarily and capriciously refused to make severance payments to Plaintiff.

The factual allegations on which the Plaintiff bases his Amended Complaint are as follows. Prior to December 1997, Plaintiff was a long standing employee of the Rohm and Haas Company, working out of its Bristol, Pennsylvania research park as a scientist. See Pl.'s Am. Compl. ¶1. In or about December 1997, Rohm and Haas launched a new joint venture company with Advanced Lighting Technologies for commercial business purposes to exploit Rohm and Haas' fiber optic sales and systems. See Pl.'s Am. Compl. ¶2. The joint venture company was named Unison Fiber Optic Lighting Systems ("Unison"), which was to be located in Solon, Ohio. See Pl.'s Am. Compl. ¶3-4.

On December 4, 1997, Millicent Pitts, Director of Corporate Development for Rohm and Haas, issued to Plaintiff an offer of employment for a full-time position with Unison. See Pl.'s Am. Compl. ¶5. The engagement letter attached a two-page document

titled "Specifics and contingencies of the employment offer for Mark Abramowicz." See Pl.'s Am. Compl. ¶6. The employment offer was for the position of Applications Engineer, which provided for a thirteen percent salary increase and required relocation to Solon, Ohio. See Pl.'s Am. Compl. ¶7. Following the employment offer letter, Plaintiff received a separate four-page question-and-answer document titled "Specific Information Regarding Benefits during the Transition Period." See Pl.'s Am. Compl. ¶16. Plaintiff decided to accept the offer of employment to work as an Applications Engineer at Unison and relocated his family to Solon, Ohio. See Pl.'s Am. Compl. ¶18.

In or about January of 1998, Rohm and Haas closed on the formation of the joint venture. See Pl.'s Am. Compl. ¶19. In October of 1999, Rohm and Haas signed a letter of intent to sell its fifty percent stake in Unison to joint venture partner Advanced Lighting Technologies, Inc. ("ADLT"). See Pl.'s Am. Compl. ¶27. In November of 1999, Rohm and Haas sold its fifty percent interest in Unison to ADLT. See Pl.'s Am. Compl. ¶28. In turn, ADLT sold the entire joint venture company to a third party company known as Fiberstars. Id.

In November of 1999, John Stroebel, Associate General Counsel for Rohm and Haas, offered Plaintiff a position with Rohm and Haas. See Pl.'s Am. Compl. ¶30. Moreover, Plaintiff was

offered a laboratory position with Fiberstars, the acquirer of Unison. See Pl.'s Mot. Summ. J. at 11. Plaintiff did not accept these offers and submitted a letter of resignation on December 27, 1999. See Pl.'s Am. Compl. ¶39.

On April 9, 2001, Defendant filed it's Motion for Summary Judgment. On May 8, 2001, Mr. Abramowicz filed his Cross-Motion for Summary Judgment. On June 11, 2001, Defendant filed its Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment. On June 21, Mr. Abramowicz filed a Sur-Rebuttal in support of his Cross-Motion for Summary Judgment. The Court now considers these filings.

II. LEGAL STANDARD

A. Summary Judgment Standard

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548 (1986). The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of

'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. When the moving party does not bear the burden of persuasion at trial, as is the case here, its burden "may be discharged by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Id. at 325.

Once the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The nonmoving party "may not rest upon the mere allegations or denials of the [nonmoving] party's pleading," id., but must support its response with affidavits, depositions, answers to interrogatories, or admissions on file. See Celotex, 477 U.S. at 324; Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990).

To determine whether summary judgment is appropriate, the Court must determine whether any genuine issue of material fact exists. An issue is "material" only if the dispute "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). An issue is "genuine" only "if the evidence is such that a

reasonable jury could return a verdict for the nonmoving party." Id. If the evidence favoring the nonmoving party is "merely colorable," "not significantly probative," or amounts to only a "scintilla," summary judgment may be granted. See id. at 249-50, 252; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348 (1986) ("When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." (footnote omitted)). Of course, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." Anderson, 477 U.S. at 255; see also Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. at 255; see also Big Apple BMW, 974 F.2d at 1363. Thus, the Court's inquiry at the summary judgment stage is only the "threshold inquiry of determining whether there is the need for a trial," that is, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 250-52.

III. DISCUSSION

Defendant Rohm and Haas Company argues the following grounds in its Motion For Summary Judgment: 1) The Rohm and Haas Benefits Administrative Committee ("BAC") did not act arbitrarily or capriciously in denying Plaintiff's claim for severance; the unambiguous terms of the Severance Benefit Plan ("SBP") compelled denial of the claim; 2) As a matter of ERISA law, an attachment to a letter does not and cannot modify or amend the Severance Benefit Plan; and 3) Even if, arguendo, the two-page attachment governs Plaintiff's rights to severance and is not otherwise preempted by ERISA, Plaintiff still is not entitled to severance under the terms of the attachment.

Plaintiff Mark Abramowicz argues the following grounds in his Cross-Motion for Summary Judgment: 1) The BAC abused its discretion by failing to consider the bilateral employment contract between Rohm and Haas and Mark Abramowicz, and by making their decision based upon the 1998 Pension Plan which contained a different severance benefit policy than that which Mark Abramowicz was subject to; 2) The pension plan administrator breached his fiduciary duty by failing to advise Plaintiff that there was no formal Severance Benefit Plan in effect as of December of 1997; 3) Plaintiff did not receive a full and fair review by the BAC because of a prejudicial formal appeal prepared

and submitted by the secretary of the BAC. The Court hereafter considers each claim.

A. Introduction

The Employee Retirement Income Security Act ("ERISA") is a comprehensive statute enacted "to promote the interests of employees and their beneficiaries in employee benefit plans," Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 90, 103 S.Ct. 2890, 2896, 77 L.Ed.2d 490 (1983), and "to protect contractually defined benefits," Massachusetts Mutual Life Ins. v. Russell, 473 U.S. 134, 148, 105 S.Ct. 3085, 3093, 87 L.Ed.2d 96 (1985); see also 29 U.S.C. § 1001.

ERISA's framework ensures that employee benefit plans be governed by written documents and summary plan descriptions, which are the statutorily established means of informing participants and beneficiaries of the terms of their plan and its benefits. See Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155 (3d Cir. 1990); Confer v. Custom Engineering Co., 952 F.2d 41 (3d Cir.1991); Hamilton v. Air Jamaica, Ltd., 945 F.2d 74 (3d Cir. 1991), cert. denied, 503 U.S. 938, 112 S.Ct. 1479, 117 L.Ed.2d 622 (1992); 29 U.S.C. § 1022(a)(1).

B. ERISA Preemption of State Law

Section 514(a) of ERISA preempts "any and all State laws

insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). The United States Supreme Court has concluded that "[t]he pre-emption clause is conspicuous for its breadth ... [and] ... [i]ts deliberately expansive language was designed to establish pension plan regulation as exclusively a federal concern." Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990) (citations omitted). "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983). The Third Circuit has concluded that a state law claim 'relates to' and is thus preempted by ERISA if "the existence of an ERISA plan was a crucial factor in establishing liability, and the trial court's inquiry would be directed to the plan...." The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. v. Nobers, 968 F.2d 401, 406 (3d Cir.1992), cert. denied, 506 U.S. 1086, 113 S.Ct. 1066, 122 L.Ed.2d 370 (1993).

Section 502(a)(1)(B) of ERISA also provides that a participant or beneficiary of an ERISA plan may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the

plan." 29 U.S.C. § 1132(a)(1)(B). Thus, the Supreme Court has found that a claim for a denial of benefits, asserted under common law principles, is preempted by ERISA. See Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 62-63, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987).

In the present case, Plaintiff asserted a one-count ERISA Complaint, basing his claim, in part, on an alleged breach of an employment contract. This breach of contract claim, standing alone, would clearly be preempted by ERISA, because Plaintiff himself has calculated the amount of recovery under this claim by reference to the Severance Benefit Plan and the provisions of ERISA, and is therefore "related to" ERISA. The Plaintiff's breach of contract analysis, therefore, must be performed under the ERISA framework.

C. ERISA Standard of Review

This action is governed by ERISA, 29 U.S.C. § 1001 et seq.. However, ERISA does not specify a standard of review applicable to actions brought by a plan participant alleging a denial of benefits. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989). In determining the appropriate standard of review, the Supreme Court in Firestone rejected the universal application of the arbitrary and capricious standard when reviewing an ERISA administrator's

decision regarding benefits eligibility. Id. Rather, applying principles of trust law, the Firestone Court held that "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Id.

The Firestone holding was interpreted by the Third Circuit in Luby v. Teamsters Health, Welfare & Pension Trust Funds, 944 F.2d 1176 (3d Cir.1991). Under Luby, where an administrator is granted discretionary authority to grant or deny benefits, the administrator's factual determinations as well as interpretations of the plan are reviewed under the arbitrary and capricious standard. Id. at 1183-84.

In the instant case, the language of the Plan afforded the Plan administrator the discretion to determine eligibility of benefits and to construe the terms of Rohm and Haas' Plan. Specifically, Article XVIII of the 1998 Pension Plan is entitled "Administration of the Plan," and Section 18.3 of Article XVIII provides:

The Administrative Committee shall have full responsibility to represent the Company and the Participants in all things it may deem necessary for the proper administration of the Plan. Subject to the terms of the Plan, the Contract, and the Trust Agreement, the decision of the Administrative Committee

upon any question of fact, interpretation, definition or procedure relating to the administration of the Plan shall be conclusive. The responsibilities of the Administrative Committee shall include the following:

18.3.2 Deciding all questions relating to the eligibility of Employees to become Participants in the Plan;

18.3.3 Interpreting the provisions of the Plan in all particulars;

18.3.6 Reviewing and answering any denied claim for benefits that has been appealed to the Administrative Committee under the provisions of Section 23.6.

See Rohm and Haas Pension Plan, Art. XVIII, Sec. 18.3

Moreover, the 1998 Pension Plan contains a claims procedure in Article XXIII, Section 23.6. With respect to appeals of denied claims for benefits, Section 23.6 provides that the claimant may submit written appeals and written issues, comments and documents. See Rohm and Haas Pension Plan, Art. XXIII Sec. 23.6. Under Section 23.6, it is in the BAC's discretion to clarify any matters it deems appropriate. Id. The BAC will then decide all appeals, and pursuant to Section 23.6:

All final interpretations, determinations and decisions by the Administrative Committee in respect of any matter hereunder will be conclusive and binding upon the Company, Participants, Spouses, Beneficiaries, and all other persons claiming any interest in the Plan.

See Rohm and Haas Pension Plan, Art. XXIII Sec. 23.6.

It is apparent, therefore, that the clear and unambiguous language of the Plan gives authority to the Plan Administrator to

construe and interpret the Plan in making all eligibility determinations. Accordingly, this Court must apply the arbitrary and capricious standard of review in deciding whether the Administrative Committee's decision to deny Plaintiff a severance benefit was appropriate.

Under the arbitrary and capricious standard of review, a court must uphold an administrator's interpretation of a plan, even if it disagrees with it, so long as "the administrator's interpretation is rationally related to a valid plan purpose and is not contrary to the plain language of the plan." Dewitt v. Penn-Del Directory Co., 106 F.3d 514, 520 (3d Cir.1997). "Simply put, under the arbitrary and capricious standard a court may not disturb a fiduciary's interpretation of the plan so long as it is reasonable." Keating v. Whitmore Mfg. Co., No. 97-4463, 1998 WL 372457, at *1 (E.D.Pa. June 4, 1998). This Court, therefore, must abide by these standards in determining whether Defendant's denial of Plaintiff's claim for severance benefits was appropriate.

D. What Plan Should Apply

In Plaintiff's Cross-Motion for Summary Judgment, Plaintiff seems to argue that Rohm and Haas should not have applied the 1998 version of their Pension Plan in determining Plaintiff's eligibility for severance pay.

It is well settled that companies are free to amend their pension plans if the amendments are formal written amendments that are executed in accordance with the Plan's procedure for amendments and that are incorporated into the Plan document. See Epright v. Environmental Resources Mgt., Inc., 81 F.3d 335, 342 (3d Cir. 1996). The Rohm and Haas Plan's procedure is found in Article XXII, Section 22.1 of both the 1994 and the 1998 Plan, which states as follows:

The Company hopes and expects to continue the plan indefinitely, but necessarily reserves the right at any time to reduce, suspend or discontinue payments to be made by it as provided hereunder. The Company reserves the right to amend or discontinue the Plan at any time, but no such action should adversely affect current rights or benefits theretofore acquired or accrued by any participant, Contingent Annuitant or Beneficiary, except such changes, if any, as may be required to permit the Plan to meet the requirements of sections 401 and 404 of the Internal Revenue Code, or the applicable provisions of any other statute or except as otherwise permitted by law. No amendment to the Plan shall decrease a Participant's accrued benefit or eliminate an optimal form of distribution except as may be permitted by ERISA or the Code.

See Rohm and Haas Pension Plan Art. XXII, Sec. 22.1.

The Plaintiff does not seem to dispute that this amendment was properly incorporated into the Plan document. The Plaintiff does claim, however, that based on his alleged bilateral employment contract, he had accrued severance benefits that could not be eliminated by amendment. The Plaintiff fails to explain

to this Court, however, how his severance benefits have "accrued."

Moreover, the alleged bilateral employment contract that Plaintiff relies on states that the Plaintiff "will remain covered by the Rohm and Haas benefit plans by which you are now covered, as those plans are amended by Rohm and Haas in the future" See Pl.'s Compl. Exh. A. This same document also states that, if Plaintiff were to meet the criteria to be eligible for severance benefits, he would "receive the same severance and outplacement services provided to Rohm and Haas employees at that time." (emphasis added) See id.

The Severance Benefit Plan ("SBP") implemented in 1998 and contained in the 1998 Rohm and Haas Pension Plan is the severance plan that was in place at the end of Plaintiff's employment and at the time of Plaintiff's appeal to the Benefits Administrative Committee. Because the Plaintiff sought severance benefits for events that occurred at the end of 1999, the 1998 SBP was the only plan that could be considered by the BAC. Moreover, in December of 1999, Plaintiff proceeded through steps to get the SBP, specifically requested the SBP in his December 1999 resignation letter, requested the SBP in his January 2000 appeal to the BAC, and now demands damages based on an SBP calculation. Therefore, the Plaintiff cannot claim that it was arbitrary and

capricious for the 1998 SBP to be applied to his request for severance benefits.

E. Application of the 1998 Plan to the Undisputed Facts

The 1998 Rohm and Haas Pension Plan includes the Severance Benefit Plan ("SBP") that is at issue in this case. The SBP appears in Section 6.10 of the 1998 Pension Plan and is effective for the time period between August 12, 1998 and December 30, 2003. See 1998 Pension Plan Sec. 6.10.2.. Section 6.10 is entitled "Involuntary Early Retirement Date ("IERD")-IERD Participants," which states as follows:

(i) a Participant with a 100% vested interest in his or her Accrued Benefit under the Plan who is formally informed that his or her employment with the Company is scheduled for elimination on or after August 12, 1998, as a result of job elimination, restructuring, reorganization or other similar reason (including redefining the essential requirements of a position); or

(ii) any other Participant (a "Volunteer") with a 100% vested interest in his or her Accrued Benefit under the Plan who, after August 12, 1998, voluntarily agrees to terminate employment with the Company, so that a position can be made available that can be filled by an individual described in (i) immediately above. An individual cannot become a Volunteer without the Company's consent and a determination by each affected Department Manager that any individual who would move into the Department Manager's Department as a result of the Volunteer's separation from service is capable of satisfactorily discharging all of the essential functions of the position.

Moreover, Section 6.10.1 expressly disqualifies persons for severance benefits if:

(iv) the individual is not a Volunteer and is not formally notified that the termination of his or her employment is in connection with restructuring, reorganization or other similar reason (including redefining the essential requirements of a position);

(vi) the individual's termination of employment with the Company is the result of a commercial transaction, involving the Company and one or more third parties such as a sale of a subsidiary, plant location or a business unit or the formation of a joint venture, commercial alliance, strategic partnership or other similar transaction, if the individual is offered employment by a party to any such transaction or under a contract between the Company and another party to the transaction, the individual is guaranteed an offer of employment.

See 1998 Pension Plan Sec. 6.10.

The clear terms of the SBP, therefore, provide two ways the Plaintiff can obtain severance benefits. First, under Section 6.10.1(i), the Plaintiff must have been formally informed that his employment was eliminated as a result of job elimination, restructuring, reorganization or other similar reason. The Plaintiff has not alleged that he was ever formally informed that his job was being eliminated. Second, under Section 6.10.1(ii), the Plaintiff must have swapped with a Rohm and Haas employee whose job was eliminated as a result of job elimination, restructuring, reorganization, or other similar reason. The

plaintiff has not alleged that he ever orchestrated an effective swap.

Moreover, Section 6.10.1(iv) explicitly disqualifies a Participant from receiving severance benefits who is not formally notified of job termination or who is not a Volunteer in a qualified swap. Section 6.10.1(vi) also disqualifies a participant who receives a job offer from a party to the sale transaction of the joint venture. Under every single scenario mentioned above, Plaintiff fails to qualify for severance benefits under the SBP.

The Benefits Administrative Committee denied the Plaintiff severance pay because he failed to meet the criteria set out in Section 6.10 of the Rohm and Haas Pension Plan. Plaintiff has not alleged that he was ever formally notified of job termination, and the Plaintiff admits that he received post-sale employment offers from both Fiberstars and Rohm and Haas, Pl.'s Mot. Summ. J. at 11, and that he decided to resign his position with the company rather than accept these employment offers. Pl.'s Compl. at ¶ 39. In light of these facts, it cannot be said that the Benefits Administrative Committee acted in an arbitrary or capricious manner in denying the Plaintiff severance benefits based on the clear language of the 1998 SBP.

F. The Two-Page Attachment To The Employment Offer

Plaintiff's central argument in his Cross-Motion for Summary Judgment is that he is entitled to severance benefits based on an alleged bilateral employment contract with Millicent Pitts, Director of Corporate Development for Rohm and Haas. See Pl.'s Compl. Exh. A. This letter, dated December 4, 1997, was given to the Plaintiff when Plaintiff was a scientist at Rohm and Haas' Bristol, Pennsylvania research park. The letter offered Plaintiff a position as Applications Engineer with Unison, the new joint venture entered into by Rohm and Haas. The position offered a thirteen percent salary increase and required the Plaintiff to relocate to Solon, Ohio.

Of particular importance to this case is a two-page attachment that accompanied this employment offer. This attachment was entitled "Specifics and contingencies of the employment offer for Mark Abramowicz," and contained one particular section of interest. This section, titled "In the Event of Discontinuation," stated as follows:

If this new joint venture is discontinued in the first two years of its operations, Rohm and Haas will make reasonable efforts to return you to a position with Rohm and Haas substantially similar to your present position. If no positions are found, you will receive the same severance and outplacement services provided to Rohm and Haas employees at that time. We hope and expect, however, that this new and exciting company

will be a great success for years to come and look forward to your help in achieving that result.

See Pl.'s Compl. Exh. A.

The facts surrounding the language in this clause are in dispute. Specifically, the parties disagree as to whether the joint venture discontinued in the first two years of operations. It is undisputed that the joint venture was in existence and operating as of January 1, 1998. The date that the joint venture terminated, however, is in dispute. The Defendant argues that January 31, 2000 was the termination date, because that is the date when the sales deal closed and the promissory note was transferred. See Def.'s Mot. Summ. J. at 24. The Defendant claims, therefore, that the joint venture was in existence for more than two years.

The Plaintiff, in contrast, argues that the termination date was in November of 1999 and, therefore, the joint venture was discontinued in the first two years of operations. In support of its argument, Plaintiff cites to the October 1, 1999 memorandum announcing that Rohm and Haas signed a letter of intent to sell its fifty percent interest in the Unison joint venture. Moreover, Plaintiff filed an Affidavit of John Davenport, President of Unison, who testified to numerous facts indicating that, by November 1, 1999, Rohm and Haas' participation in the Unison joint venture had ended. See Davenport Affid. at ¶¶ 2-5.

Because the interpretation of this document is in dispute, this Court's inquiry must focus on the legal status of the attachment to the employment offer under ERISA legal principles.

Under Third Circuit law, it is well-settled that ERISA precludes an employer from making "oral or informal modifications" to employee benefit plans. See Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155, 1163 (3d Cir.1990). In concluding that ERISA plans cannot be modified based on oral modifications which are never reduced to writing, the Hozier Court cited Section 402(a)(1) of ERISA. Id. The court found that "[s]ection 402(a)(1) of ERISA requires that 'every employee benefit plan shall be established and maintained pursuant to written instrument.'" Id. (citing 29 U.S.C. § 1102(a)(1)). Thus, the court held that any oral or informal communications made, as a matter of law, cannot modify a written pension plan. Id. Many other circuits hold a consistent view. See Pizlo v. Bethlehem Steel Corp., 884 F.2d 116, 120 (4th Cir.1989) (stating that "informal" or "unauthorized" modification of pension plans is "impermissible" under ERISA); Degan v. Ford Motor Co., 869 F.2d 889, 895 (5th Cir.1989) ("ERISA mandates that [a] plan itself and any changes made to it [are] to be in writing."); Musto v. American General Corp., 861 F.2d 897, 910 (6th Cir. 1988) ("[A] written employee benefit plan may not be modified or superceded

by oral undertakings on the part of the employer."), cert. denied, 490 U.S. 1020, 109 S.Ct. 1745, 104 L.Ed.2d 182 (1989); Moore v. Metropolitan Life Insurance Co., 856 F.2d 488, 492 (2d Cir. 1988) ("[A]n ERISA welfare plan is not subject to amendment as a result of informal communications between the employer and plan beneficiaries."); Straub v. Western Union Telegraph Co., 851 F.2d 1262, 1265 (10th Cir.1988) ("[N]o liability exists under ERISA for purported oral modifications of the terms of an employee benefit plan.").

Because the attachment to the employment offer was clearly a writing, the essential question is whether the attachment would be considered an "other informal document" that would not be permitted to alter the language of the Pension Plan. The Third Circuit cases that address the issue all deal with oral statements and do not address what would be considered "other informal documents." See, e.g., Grabski v. Aetna, Inc., 43 F.Supp.2d 521.

However, In Sprague v. General Motors Corp., 133 F.3d 388, 402-03 (6th Cir.1998) (en banc), the Sixth Circuit addressed factual circumstances involving an informal written document that related to an ERISA pension plan. In Sprague, employees who participated in the defendant's early retirement incentive program sought damages based on the defendant's decision to

modify the health care benefits initially promised to them under that program. See id. at 394-95. In exchange for these benefits the defendant required many of them to sign statements electing voluntary early retirement, and in some cases, waiving any potential claims for discrimination or other wrongful discharge. See id. Rejecting the plaintiffs' argument that these statements created binding contracts for vested medical benefits, the court held that they were unenforceable because they did not profess to be formal ERISA plan amendments and were not themselves independent ERISA plans. See id. at 402-03.

The court reasoned that ERISA requires every plan to be in writing so that employees may determine their rights and obligations upon examining the plan documents, see id. at 402, and concluded that, "[a]ltering a welfare plan on the basis of non-plan documents and communications, absent a particularized showing of conduct tantamount to fraud, would undermine ERISA," Id. at 403. Thus, under Sprague, a document such as the one at issue in this case would not be enforceable unless the agreements themselves constitute formal amendments to the ERISA plan.

In the instant case, the two-page attachment to the offer of employment did not even purport to be a plan amendment, nor is there anything in the attachment that could be reasonably construed to be an attempt to amend the Severance Benefit Plan.

Therefore, the two-page attachment would be considered an informal document that has not been properly incorporated into the Plan. Because the attachment is an informal document, it cannot alter the scope or the terms of Rohm and Haas' obligations to provide severance benefits. Accordingly, based on the above analysis, this Court finds that the Defendant was neither arbitrary nor capricious in denying the Plaintiff's claim for severance benefits. Therefore, The Defendant's Motion is granted and the Plaintiff's Motion is denied.

An appropriate Order follows.

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

MARK ABRAMOWICZ : CIVIL ACTION
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 v. :
 :
 ROHM AND HAAS COMPANY :
 : NO. 00-4645

O R D E R

AND NOW, this 30th day of October, 2001, upon consideration of Defendant Rohm and Haas Company's Motion for Summary Judgment (Docket No. 8), Plaintiff Mark Abramowicz's Cross-Motion for Summary Judgment (Docket No. 15), Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment (Docket No. 24), and Plaintiff's Sur-Rebuttal in Support of Plaintiff's Cross-Motion for Summary Judgment (Docket No. 25), IT IS HEREBY ORDERED that:

- (1) Defendant's Motion for Summary Judgment is **GRANTED**; and
- (2) Plaintiff's Cross-Motion for Summary Judgment is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.