

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

DOREENE MASONHEIMER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	
	:	NO. 99-5400
COLONIAL PENN GROUP, INC., et al.,	:	
Defendants.	:	

GREEN, S.J.

SEPTEMBER _____, 2002

MEMORANDUM/ORDER

Presently before the Court are: 1) Plaintiff's Motion for Summary Judgment, Defendant UNUM Life Insurance Company of America's Response, and Defendant Colonial Penn Insurance Co.'s Response; 2) Defendant UNUM Life Insurance Company of America's Motion for Summary Judgment, and Plaintiff's Response; and, 3) Defendant Colonial Penn Insurance Co.'s Motion for Summary Judgment, and Plaintiff's Response. For the following reasons, Defendant Colonial Penn Insurance Co.'s motion for summary judgment will be granted, the remaining motions for summary judgment will be denied.

I. Facts and Procedural Background

Plaintiff Doreene Masonheimer ("Plaintiff") worked for Defendant Colonial Penn Insurance Company ("CPI") from 1978 until July of 1994. During that time, she worked in increasingly responsible positions, and, by July, 1994, was working in a supervisory position in the Property Casualty Division. During her employment, Plaintiff began to suffer epileptic seizures, starting in 1991, the first of which occurred while on a business trip. Over time, these seizures increased in both impact and frequency, despite medications and treatment. Plaintiff alleges that, as of July 4, 1994, her condition had worsened to the point that she could no longer

work, and Plaintiff applied for and received short-term disability benefits from CPI.¹

In December 1994, Plaintiff applied for long-term disability benefits, as her short-term benefits were ending. CPI, which directly handled Plaintiff's short-term claim, then referred her to its long-term disability insurance carrier, Defendant UNUM Life Insurance Company of America ("UNUM").

At about the same time that Plaintiff went out on short-term disability, Plaintiff was informed that she was being transferred out of her position and unit into another unit, in a position which she considered to be a demotion, even though she retained her salary. The new position – in automobile insurance, as opposed to property insurance – was not of a supervisory nature. It is hinted, and at times alleged, that Plaintiff went out on short term disability as retaliation for her "demotion" and that she was not actually sick enough to warrant such leave. Defendants – specifically UNUM – believe that since Plaintiff was not sick in July 1994, she was not sick later on when she applied for her long-term disability benefits.

In December, 1994, UNUM began considering Plaintiff's long-term disability claim. UNUM, upon receiving Plaintiff's claim forms, was required by law to either pay or deny

¹ CPI offered short-term disability and long-term disability plans to its employees. For its employees' short-term disability claims, CPI was solely responsible for making coverage and payment decisions. CPI also established a long-term disability plan, which is the subject of the instant litigation. Under the long-term disability plan, CPI did not make any decisions regarding entitlement to coverage, as all coverage decisions and payment obligations were UNUM's responsibility under a fully insured long-term disability policy. It is undisputed that Plaintiff received all of her short-term disability benefits from CPI. In the instant litigation, there is no allegation that CPI failed to meet its obligations under the short-term disability plan. Plaintiff is not seeking anything from CPI with regards to CPI's handling of Plaintiff's short-term disability benefits, and all of Plaintiff's allegations against CPI have to deal with CPI's involvement in Plaintiff's claim for long-term disability benefits. However, as will be discussed in greater detail, there is no evidence that CPI, under the long-term disability plan, had any responsibility except to give out copies of the plan and refer claimants to UNUM.

Plaintiff's claim within 90 days. In March, 1995, on the 90th day, UNUM entered into a settlement agreement with Plaintiff, under which Plaintiff was to receive approximately \$39,000.00, which represented nearly one full year of long-term disability benefits. In executing the settlement agreement, Plaintiff agreed to waive all claims which she had against UNUM. Interestingly, the negotiations which ended with this settlement agreement were conducted between UNUM and Plaintiff directly, even though UNUM was informed by an attorney that he was representing Plaintiff in her claim for benefits. In the memoranda filed, no party has given an explanation for this.

In May, 1995 – two months after signing the release – Plaintiff was diagnosed with a brain tumor. At this point, Plaintiff called UNUM and attempted to re-obtain long-term disability benefits. Plaintiff filed a formal claim for benefits, and UNUM eventually issued a formal denial of her claim, informing Plaintiff that her claims were settled, and that the release which she had signed in March, 1995 was valid and binding.

Plaintiff initiated the instant action with the filing of a writ of summons in Pennsylvania state court in March, 1998. In October 1999, Defendants removed the action to this Court, as the parties are “residents” of different states, and the issues involved are controlled by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 – 1461. The current Defendants are CPI, UNUM, and the Long-term Disability Plan (“Plan”).

All parties² have filed separate motions for summary judgment, and, on September 9,

² While debating whether Plaintiff has set forth claims against the Plan, Defendant CPI made the following statement in its memorandum of law in support of its motion for summary judgment:

To the extent that Plaintiff is attempting to assert claims against the Plan that can only be directed at the plan administrator or other plan fiduciaries, CPI files its

2002, the Court heard oral arguments from the parties on the sundry issues involved.

II. Standard of Review

All parties move pursuant to Rule 56 of the Federal Rules of Civil Procedure. To be successful, a party must prove that, in considering the “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, . . . 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.” See Fed. R. Civ. P. 56(c). An issue is “material” if the dispute may affect the outcome of the suit under the governing law and is “genuine” if a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Summary judgment should be granted, “after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If, in response to a properly supported motion for summary judgment, an adverse party merely rests upon the allegations or denials in their pleading, and fails to set forth specific, properly supported facts, summary judgment may be entered against her. See Fed. R. Civ. P. 56(e).

Of course, a court must draw all reasonable inferences in favor of the party against whom judgment is sought. See American Flint Glass Workers, AFL-CIO v. Beaumont Glass Company, 62 F.3d 574, 578 (3d Cir. 1995). The substantive law controlling the case will determine those facts that are material for the purpose of summary judgment. See Anderson, 477 U.S. at 248.

Motion for Summary Judgment and this Memorandum of law on behalf of the Plan.
(See Dfdt. CPI’s Motion for Summary Judgment n.1.)

III. Discussion

Plaintiff sets forth several allegations against each Defendant in the Amended Complaint, which the Court will address seriatim.

A. Plaintiff's claims against CPI

Plaintiff makes allegations against CPI in each of the seven counts of her Amended Complaint. Primarily, Plaintiff alleges that CPI was the Plan Administrator,³ with duties towards Plaintiff. Additionally, Plaintiff alleges that CPI acted, at times, as the Claims Fiduciary.⁴ The

³ Under ERISA, the term “administrator” means:

- (i) the person specifically so designated by the terms of the instrument under which the plan is operated;
- (ii) if an administrator is not so designated, the plan sponsor; or
- (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

29 U.S.C. § 1002(16)(A). The term “plan sponsor” means:

- (i) the employer in the case of an employee benefit plan established or maintained by a single employer;
- (ii) the employee organization in the case of a plan established or maintained by an employee organization; or
- (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

29 U.S.C. § 1002(16)(B).

⁴ Under ERISA, the definition, relevant to the instant action, of a fiduciary is as follows:

- (A) . . . a person is a fiduciary with respect to a plan to the extent
 - (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
 - (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
 - (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated

Court will address these allegations while reviewing each count of Plaintiff's Amended Complaint as it refers to CPI.

1. Whether CPI failed to provide copy of the Plan.

In Count I of her Amended Complaint, Plaintiff alleges that CPI failed to provide her with a copy of the Long-term Disability Plan, even though she requested a copy of the Plan from CPI on several occasions. Plaintiff argues that CPI's failure to provide a copy of the Plan is violative of ERISA, particularly 29 U.S.C. § 1132(c)(1)(B), which provides that any administrator "who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary . . . may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day. . . ."

Though not specifically cited to by Plaintiff, the Court assumes that she is seeking to hold CPI liable under 29 U.S.C. § 1132(c)(1)(B) for CPI's alleged failure to comply with 29 U.S.C. § 1024(b)(4). Pursuant to 29 U.S.C. § 1024(b)(4), an ERISA plan administrator "shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description. . . ."

In her deposition, Plaintiff testified that she could not remember whether she had ever requested, in writing, a copy of the Plan from CPI. (See Dfdt. CPI's Motion for Summary Judgment Declaration of Kay Kyungsun Yu, Tab B at 33:23 – 34:10.) Plaintiff also testified that if she did submit a written request for the Plan, she probably would have kept a copy of it.

under section 1105(c)(1)(B) of this title.
29 U.S.C. § 1002(21)(A).

(See id.) Finally, Sonya DePaula, the Manager of the Employee Health Department at CPI at the time Plaintiff's claim was being handled, stated in a declaration filed with Defendant CPI's motion for summary judgment that if Plaintiff had submitted a written request to CPI for a copy of the Plan, the request would have been placed in Plaintiff's benefits file, and that no such request was found in Plaintiff's benefits file. (See **Dfdd. CPI's Motion for Summary**

Judgment Declaration of Sonya DePaula ¶¶ 6-7.)

In response to CPI's arguments, Plaintiff contends that her failure to submit a written request for the Plan to CPI was CPI's fault, because CPI told her to directly contact UNUM with any requests she had regarding the Plan. Plaintiff argues that

CPI cannot have it both ways. CPI cannot claim they did not receive a written request for the Plan, if they advised and directed employees to make all requests directly to UNUM, as opposed to CPI. As a result of that instruction, although she made verbal requests for the Plan from CPI, [Plaintiff] sent written requests to UNUM for the Plan. CPI cannot now fault [Plaintiff] for following its direction to direct all further contacts to UNUM, as opposed to CPI. It was CPI's responsibility to assist [Plaintiff].

(**Pltf.'s Resp. to Dfdd. CPI's Motion for Summary Judgment** at 7.) Plaintiff does not point out any evidence to support the aforementioned contention. To sustain her burden of producing some evidence, Plaintiff could have submitted relevant portions of her deposition testimony or a formal affidavit which supported her statement that she made certain, non-written requests of CPI, specifically a request for a copy of the Plan. Plaintiff's failure to submit any evidence leaves her allegation unsupported, and, at this stage of the litigation, such an allegation is insufficient to present a genuine issue of material fact.

However, assuming, arguendo, that Plaintiff did produce evidence which supported her aforementioned assertion of an oral request, I conclude that she would not be able to sustain an

action for damages under § 1132(c) for violation of § 1024(b)(4), because she has no evidence that she submitted a written request to CPI for the Plan.

At the time Plaintiff was proceeding with her long-term disability claim, she was represented by an attorney, though, at times, Plaintiff interacted directly with CPI and UNUM. (See, e.g., **Dfdt. CPI's Motion for Summary Judgment** Declaration of Kay Kyungsun Yu, Tab 19.) While the Court understands that Plaintiff may not have been aware of the technical provisions of ERISA at the time she was acting on her own behalf, it is not authorized to relieve Plaintiff of her duty to provide a written request. If the Court granted such relief, the result would be to penalize a plan administrator, which was acting in technical compliance with ERISA's requirements. It is possible that Plaintiff was told to communicate directly with UNUM, since UNUM was the claims fiduciary and ultimately responsible for coverage decisions involving the Plan. However, if she wanted a copy of the Plan, ERISA requires that she submit a written request for it to the Plan Administrator. As stated above, there is no evidence to suggest that Plaintiff – through her attorney, or acting on her own behalf – ever submitted a written request to CPI for a copy of the Plan. Furthermore, Plaintiff testified in her deposition that she did not recall that she ever submitted a written request for the Plan and, that if she had, she would probably have kept a copy of it.

Therefore, after careful consideration of the parties' arguments and the evidence submitted, I conclude, as a matter of law, that there is no evidence to support Plaintiff's claims against CPI in Count I of her Amended Complaint. Since there is no genuine issue of material fact, summary judgment will be granted to CPI on Count I of Plaintiff's Amended Complaint.

2. Whether CPI coerced or failed to assist Plaintiff.

In Count II of her Amended Complaint, Plaintiff alleges that CPI violated fiduciary duties which ERISA sets forth for plan administrators under 29 U.S.C. § 1104(a)(1), by failing to assist Plaintiff with the claims process, and that CPI's failure to do so resulted in Plaintiff's inability to properly proceed with her claim against UNUM. Plaintiff also argues that CPI coerced Plaintiff into the subject settlement agreement with UNUM. (See Pltf.'s Resp. to Dfdt. CPI's Motion for Summary Judgment at 8-9.)

a. Whether CPI was required to assist Plaintiff with her claim.

Plaintiff argues that, under ERISA, the "company maintaining a Plan is a Fiduciary to the extent it has such discretionary authority and any officer or employee who exercises discretionary authority on behalf of such company is also a Fiduciary." (**Pltf.'s Mem. in Support of her Motion for Summary Judgment** at 19 (citing 29 C.F.R. § 2509.75-8).)

However, Plaintiff has failed to show that CPI had any discretionary authority, or that it exercised any discretionary authority over the Plan. The Plan in question vests processing and coverage authority with UNUM, not with CPI. Therefore, I conclude that Plaintiff has failed to show that CPI is a fiduciary under ERISA, insofar as Plaintiff seeks to hold CPI liable for failing to provide assistance to her in proceeding with her claim.

b. Whether CPI coerced Plaintiff to settle with UNUM.

Drawing all inferences in favor of the Plaintiff on this issue, the strongest evidence supporting her claim is her deposition testimony, which is as follows: 1) Plaintiff called Katherine McMaster ("McMaster"), the Vice-President of CPI's Human Resources Department in March, 1995; 2) Plaintiff told Ms. McMaster that UNUM was threatening to deny her claim,

and that she needed help; 3) Ms. McMaster called UNUM's representative, Anne Coyle-Larsen ("Larsen") and discussed Plaintiff's claim with Ms. Larsen; 4) Ms. McMaster then called Plaintiff, informed Plaintiff of the settlement amount being offered, said that the settlement was the best Ms. McMaster could do, and said Plaintiff had to either take this or not get anything. (See Pltf.'s Mem. in Support of her Motion for Summary Judgment Exh. Q at 53:5 – 55:16.) Plaintiff says that the last statement which Ms. McMaster made – that Plaintiff had to either take the settlement or get nothing – was coercive because of her particular circumstances at the time: she was unemployed, was not receiving any money, her bills weren't getting paid, and she had significant health problems. Taking all of this into consideration, Plaintiff argues that her condition was so frail, that Ms. McMaster's phone call informing her of UNUM's offer coerced her into signing an unfair settlement agreement. Finally, Plaintiff argues that CPI left her "hopeless" because CPI "failed to counsel her or to assist her in any way to obtain any specific reason why she was denied long-term disability benefits from UNUM." (See Pltf.'s Resp. to Dfdt. CPI's Motion for Summary Judgment at 9.)

To show coercion, like duress, requires a high degree of "restraint or danger, either actually inflicted or threatened and impending, which is sufficient to overcome the mind of a person of ordinary firmness." See Noyes v. General American Life Ins. Co., No. CIV. A. 97-2902, 1998 WL 54347, at *2-3 (E.D. Pa. Jan. 16, 1998) (citing Degenhardt v. Dillon Co., 543 Pa. 146, 669 A.2d 946, 950 (Pa. 1996), citing Smith v. Lenchner, 204 Pa. Super. 500, 205 A.2d 626, 628 (Pa. Super. Ct. 1964)). "Moreover, in the absence of threats of actual bodily harm there can be no duress where the contracting party is free to consult with counsel." See Noyes, 1998 WL 54347 at *3.

Plaintiff argues that the aforementioned standard is inapplicable to her, because she did not possess a “mind of a person of ordinary firmness,” due to the brain tumor which allegedly interfered with her mental capacities. However, the above standard is not a totally subjective one; that is, it requires not only a mind which can be overcome, but also coercive action which threatens such a high degree of restraint and danger that the subject mind is unable to withstand the pressure, subjecting the victim to the whims and guile of the offender.

I conclude, as a matter of law, that no reasonable fact-finder could find that CPI’s actions, through Ms. McMaster, rise to the egregious level of behavior necessary to find that CPI coerced Plaintiff. There is no evidence to show that Ms. McMaster did more than respond to Plaintiff’s phone call, and relayed information from UNUM to Plaintiff. The evidence supports only a conclusion that, if Plaintiff had not called Ms. McMaster, Ms. McMaster would not have been involved in the negotiation of the claim at all. While Plaintiff may have been vulnerable because of her health condition, there is no evidence that CPI took advantage of her by attempting, at her request, to help her. Also, CPI had no incentive to coerce Plaintiff, since any monetary payments to which Plaintiff would have been entitled would have been the sole financial and legal responsibility of UNUM. Furthermore, I conclude that Plaintiff was free to consult with counsel, who she had, apparently, previously retained, before entering into the settlement agreement.⁵ Therefore, I conclude as a matter of law that the evidence presented does not

⁵ Plaintiff was represented by an attorney in her claim for worker’s compensation and in a previously filed federal lawsuit. The record discloses that this same attorney issued a letter to UNUM, informing UNUM that he was representing Plaintiff in her claim for long-term disability benefits. (See **Dfdd. CPI’s Motion for Summary Judgment** Declaration of Kay Kyungsun Yu, Tab 19.) While it is not entirely clear from the record presented why Plaintiff dealt directly with UNUM with regards to her claim for long-term disability benefits, it is clear that she was free to consult with counsel during the time she alleges CPI was “coercing” her. This fact, while not

support a finding that CPI coerced Plaintiff.

c. Count II of Plaintiff's Amended Complaint.

For the reasons set forth above in a. and b. of this section, Defendant CPI's motion for summary judgment will be granted as to Count II of Plaintiff's Amended Complaint.

3. Whether CPI is liable for failing to deny Plaintiff's claim.

In Count III of Plaintiff's Amended Complaint, Plaintiff alleges that no Defendant issued a written letter of denial, as is required pursuant to 29 U.S.C. § 1133, which states as follows:

In accordance with regulations of the Secretary, every employee benefit plan shall –

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

However, Plaintiff has failed to produce any evidence that, under the Plan, CPI had any authority or responsibility to deny her claim. I conclude that, under the Plan, the sole authority and responsibility for investigating, paying and/or denying the claim rested with UNUM. Because there is no genuine issue of material fact regarding this issue, I will grant Defendant CPI's motion for summary judgment as to Count III of Plaintiff's Amended Complaint.

4. Whether CPI is liable for failing to respond within 90 days.

In Count IV of her Amended Complaint, Plaintiff alleges that the Defendants failed to respond to Plaintiff's claim in writing. It appears that Plaintiff is seeking damages against

dispositive in and of itself, militates against Plaintiff's argument that she was coerced by CPI at the time she entered into the settlement agreement with UNUM.

Defendants pursuant to 29 U.S.C. § 1132(a)(1)(A), which, referring to violations of ERISA’s reporting and disclosure requirements under 29 U.S.C. § 1132(c), allows for certain relief.⁶

“[U]nder ordinary circumstances defects in fulfilling the reporting and disclosure requirements of ERISA do not give rise to a substantive remedy other than that provided for in [29 U.S.C. § 1132(a)(1)(A)]. Ackerman v. Warnaco, Inc., 55 F.3d 117, 124 (3d Cir. 1995).

There is “the possibility of a remedy where the plaintiff can demonstrate the presence of ‘extraordinary circumstances.’” Id. “Such circumstances include situations where the employer has acted in bad faith, or has actively concealed a change in the benefit plan, and the covered employees have been substantially harmed by virtue of the employer’s actions.” Id. at 125.

Plaintiff argues that this case presents “extraordinary circumstances” warranting such substantive remedies. (See Pltf.’s Resp. to Dfdt. CPI’s Motion for Summary Judgment at 10.) Plaintiff further argues that the “record in this case reveals that CPI was not competent to advise [Plaintiff] on proceeding with her claim for long-term disability benefits.” (See Pltf.’s Resp. to Dfdt. CPI’s Motion for Summary Judgment at 10.) Finally, Plaintiff argues that CPI refers “claimants to the CPI Employee Handbook . . . which fails to give current information regarding Long Term Disability as its latest revision was June of 1992 and UNUM was their Long Term Disability carrier only for 1994.” (See Pltf.’s Mem. in Support of her Motion for

⁶ Though Plaintiff does not specifically cite these sections to support her claims under Count IV, either in her Amended Complaint or her memoranda in support of and in response the several motions for summary judgment, Plaintiff impliedly accepts the relevance of these sections by her citation, in her Response to CPI’s motion for summary judgment, of Ackerman v. Warnaco, Inc., 55 F.3d 117 (3d Cir. 1995). Specifically, Plaintiff argues that Ackerman’s “extraordinary circumstances” language applies to her claims in Count IV of her Amended Complaint. This language was used in Ackerman only while discussing ERISA’s reporting and disclosure requirements.

Summary Judgment at 21.)

After careful consideration of the parties' arguments, I conclude that Plaintiff's arguments do not, as a matter of law, present such "extraordinary circumstances" from which a fact-finder could find that Plaintiff is entitled to any substantive remedies from CPI. There is no evidence to support Plaintiff's argument that CPI's actions rise to the level of egregious conduct warranting a conclusion that "extraordinary circumstances" exist in this case. Therefore, summary judgment will be granted to CPI on all claims in Count IV of Plaintiff's Amended Complaint.

5. Whether CPI failed to furnish a timely and intelligible Plan Summary.

Count V of Plaintiff's Amended Complaint alleges that the Defendants failed to provide Plaintiff with Plan documents, Plan updates, and the effect of new Plan clauses. Specifically, Plaintiff averred that CPI had failed to timely furnish the Plan to Plaintiff.

CPI has produced evidence that, in November 1994, CPI forwarded Plaintiff a summary Plan description when they forwarded to her the application materials for her long-term disability benefits. CPI provided Plaintiff with the summary Plan description at that time because Plaintiff's short-term disability benefits were ending, and CPI wanted to provide Plaintiff with the necessary information which Plaintiff needed to apply for long-term disability benefits from UNUM. (See Dfdd. CPI's Motion for Summary Judgment Declaration of Kay Kyungsun Yu, Tab 11.) In her memorandum in support of her motion for summary judgment and her Response to Defendant CPI's motion for summary judgment, Plaintiff has failed to point to any evidence which contradicts CPI's evidence.

I conclude, based on a careful review of the parties' arguments, that there is no genuine issue of material fact regarding whether CPI supplied Plaintiff with a copy of the summary Plan

description. Therefore, summary judgment will be granted to CPI on Count V of Plaintiff's Amended Complaint.

6. Whether CPI interfered with Plaintiff's protected rights.

In Count VII of her Amended Complaint, Plaintiff stated that CPI and UNUM's "refusal to pay the long term disability benefits to which [Plaintiff] was entitled . . . interfered with protected rights in violation of 29 U.S.C. § 1140." (See **Pltf.'s Am. Compl.** ¶ 71.) This section reads as follows:

§ 1140. Interference with protected rights

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C.A. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

29 U.S.C. § 1140.

Plaintiff has failed to point to any evidence that CPI has discharged, fined, suspended, expelled, disciplined or discriminated against her for exercising her right to long-term disability Plan benefits. At the time Plaintiff applied for long-term disability benefits, she was not working at CPI, and had no plan to return in the near future, evidenced by her application for long-term disability benefits. Furthermore, as stated several times above, CPI had no control over the coverage determination of Plaintiff's claim for long-term disability benefits; that is, CPI could

neither honor nor deny her claim, and there is no evidence that CPI could force UNUM to do what CPI wanted even if CPI attempted to influence UNUM's decision. The Plan in question was fully insured by UNUM, and there is no evidence that the claim was to be paid, monitored or controlled by CPI.⁷

Therefore, because there is no evidence from which a fact-finder could find that CPI interfered with Plaintiff's rights under 29 U.S.C. § 1140, I will grant CPI's motion for summary judgment as to Count VII of Plaintiff's Amended Complaint.

7. Whether CPI is liable to Plaintiff for attorney fees and costs.

Count VI of Plaintiff's Amended Complaint seeks attorney fees and costs to be paid to Plaintiff from Defendants, pursuant to 29 U.S.C. § 1132(g). However, since I have concluded that summary judgment will be granted in favor of CPI and against Plaintiff on all of Plaintiff's claims, there is no authority to order CPI to pay Plaintiff's attorney fees and costs. Therefore, CPI's motion for summary judgment as to Count VI of Plaintiff's Amended Complaint will be granted.

To the extent Plaintiff has set forth any claims against the Plan itself, I conclude that summary judgment is appropriate, for the same reasons, stated above, that summary judgment is appropriate for CPI.

B. Plaintiff's claims against UNUM

All issues regarding Plaintiff's claims against UNUM concern the validity of the

⁷ Because I have determined that CPI is entitled to summary judgment because of the lack of evidence to support Plaintiff's claims, I do not consider the other arguments and defenses put forth by CPI.

settlement agreement which Plaintiff signed in March, 1995. UNUM argues that this settlement agreement discharges all claims which Plaintiff had or could have against UNUM, related to the claim for long-term disability benefits which she filed in or around December, 1994. Plaintiff argues that the settlement agreement should be set aside, because she was suffering such mental incapacity as a result of a brain tumor that she was legally unable to enter into a legally binding settlement agreement.

Defendant UNUM has several related responses to Plaintiff's argument that the settlement agreement is invalid because of her mental incapacity. First, Unum argues that, pursuant to standard contract construction principles, the settlement agreement is legally binding on Plaintiff. Second, UNUM argues that, pursuant to the Plan, all decisions regarding the validity of the settlement agreement are solely within its discretion. Third, UNUM argues that, in reviewing whether UNUM's conclusion regarding the validity of the release was correct, the Court should apply the more deferential "arbitrary and capricious" standard of review, as opposed to the "de novo" standard of review which Plaintiff asks the Court to utilize. Fourth, UNUM argues that the Court, regardless of the standard of review it uses, should only look at the administrative record developed by UNUM in reviewing Plaintiff's claim, and should not consider any evidence outside the administrative record or developed in this litigation. Fifth, UNUM argues that if the Court, under any standard of review, determines that UNUM's conclusion regarding the validity of the settlement agreement was incorrect, the Court should remand the matter to UNUM to conduct further administrative hearings on Plaintiff's mental

capacity at the time she executed the settlement agreement.⁸

First, I will determine the applicable standard of review.

1. Standard of review.

In reviewing UNUM's decision to deny Plaintiff's claim, I must determine what deference I will give to UNUM's decision. Ordinarily, a denial of benefits "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." See Firestone Tire & Rubber Co. v. Bruch, 498 U.S. 101, 115 (1989). The language of the plan will inform the court whether such discretionary authority was given to the administrator or fiduciary. See id. Where discretion has been given to the administrator or fiduciary, its decisions are reviewed under an "abuse of discretion" or "arbitrary and capricious" standard. See Mitchell v. Eastman Kodak Co., 113 F.3d 433, 437 (3d Cir. 1997).

However, where an employer purchases a disability plan from an insurance company, and the insurance company is responsible for funding and interpreting the plan, the Court of Appeals for the Third Circuit has determined that a "sliding scale" approach must be utilized to determine the amount of deference a court should give to the insurance company's decisions. See Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 379 (3d Cir. 2000). This approach is necessitated by the inherent conflict created when a company is both charged with interpreting whether to honor claims under the plan, and responsible for incurring the fiscal impact of the decision.

⁸ UNUM's fifth argument was proffered by its counsel during oral argument. As UNUM's counsel recognized during oral argument, the Court could, after concluding that there was a genuine issue of material fact regarding UNUM's decision, decide either to return the matter to UNUM for further proceedings or to make the necessary factual determinations itself.

See Pinto, 214 F.3d at 388. Under these situations, “insurance carriers have an active incentive to deny close claims in order to keep costs down and keep themselves competitive so that companies will choose to use them as their insurers” See id. Therefore, in reviewing decisions of “conflicted” insurers, a court should apply a “heightened arbitrary and capricious” standard, with several factors informing the level of deference applied. See Pinto, 214 F.3d at 392. Factors include the sophistication of the parties, the information accessible to the parties, the nature of the financial arrangement between the insurer and the company, and the current status of the fiduciary. See id. I will “look not only at the result – whether it is supported by reason – but at the process by which the result was achieved.” Pinto, 214 F.3d at 393.

In May of 1995 – approximately two months after entering into the settlement agreement with UNUM – Plaintiff was diagnosed with a brain tumor. At this point, Plaintiff contacted UNUM, and attempted to have UNUM re-visit the settlement agreement. UNUM issued a letter to Plaintiff explaining that the case was settled, and that UNUM would not offer her any additional benefits, but informing her that if she questioned the validity of the agreement, she could file a request with UNUM to have this decision reviewed. (See Pltf.’s Mem. in Support of her Motion for Summary Judgment Exh. N.) In compliance with UNUM’s direction, Plaintiff requested a formal review.

In October, 1995, UNUM issued a letter to Plaintiff which informed Plaintiff that UNUM’s review had ended, and that UNUM was standing behind its decision to deny her benefits based on the validity of the settlement agreement, regardless of her current medical condition. (See Pltf.’s Mem. in Support of her Motion for Summary Judgment Exh. R.) The October, 1995 letter, from Stella Fohlin, Senior Quality Review Analyst at UNUM, included the

following explanation:

Based on a complete review, I must advise you that the settlement release you signed is a valid contract. We cannot overturn the release you signed and provide additional benefits to you.

As you know, the basis of UNUM's settlement offer was that you were not disabled when you ceased work. We have had our Medical Department review your claim. This review supports our prior determination. Although you have become disabled at a later date, your coverage ceased when you ceased work and were not disabled at that time.

Our Legal Department has also reviewed your claim, and has advised us that the release is a valid release.

(See Pltf.'s Mem. in Support of her Motion for Summary Judgment Exh. R.) Interestingly, that letter was the first formal, written confirmation by UNUM to Plaintiff that UNUM did not consider Plaintiff disabled at the time UNUM decided to settle Plaintiff's claim. Moreover, although this letter purported to deny Plaintiff's claim based on the validity of the settlement agreement, UNUM informed Plaintiff that its Medical Department had reviewed her file **after** the settlement agreement was consummated. Finally, the letter failed to indicate what medical consideration was given to the effect Plaintiff's medical condition had on her ability to enter into a "valid contract."

In the instant action, CPI purchased a fully insured policy from UNUM, under which UNUM was responsible to "pay the benefits provided" in the policy. (See Pltf.'s Mem. in Support of her Motion for Summary Judgment Exh. E at L-1.) UNUM also solely retained all Discretionary Authority under the policy, pursuant to the following language:

In making any benefits determination under this policy, [UNUM] shall have the discretionary authority both to determine an employee's eligibility for benefits and to construe the terms of this policy.

(See Pltf.'s Mem. in Support of her Motion for Summary Judgment Exh. at L-PS-2 ¶ 11.)

Furthermore, UNUM, aware of Plaintiff's complaints of depression and anxiety resulting both from her frequent medical emergencies and the financial strain placed on Plaintiff while she awaited UNUM's determination of her eligibility for long-term disability payments, did not consider or address Plaintiff's capacity to enter into the settlement agreement. Also, while UNUM did allow Plaintiff to submit evidence in its review, it is indisputable that UNUM was, in effect, making its own determination regarding the validity of its own settlement agreement, said settlement agreement created by its own employee, with the effect of said agreement serving to insulate UNUM from any further financial impact; this obviously serves to increase the conflict of interest UNUM has.

After careful consideration of the parties arguments and memoranda, I conclude that both sides have produced evidence which creates a genuine issue of material fact which cannot be decided on summary judgment for either party. As the Third Circuit stated in Pinto, summary judgment is inappropriate when there is a genuine issue of material fact as to whether an insurance company acted arbitrarily and capriciously. See Pinto, 214 F.3d at 394. Therefore, as the court in Pinto directed on similar facts, I will hold a hearing at which I will conduct a "penetrating review" of UNUM's decision.⁹ See Pinto, 214 F.3d at 395. In addition to evidence regarding the conflict of interest, and the ways in which the conflict may have influenced UNUM's decision, I will accept evidence of Plaintiff's capacity to enter into the March, 1995 settlement agreement, and then I will determine whether, considering the conflict, what

⁹ The Pinto court did not refer the matter back to the insurance company, but, rather, sent the case back to the district court to decide what deference, if any, to give to the insurance carrier's decision. After fully developing the record as a fact-finder, I will determine what level of deference to give to UNUM's decision, and then review UNUM's decision while considering that level of deference.

deference, if any I will give to UNUM's decision.¹⁰

IV. Conclusion

For the foregoing reasons, CPI's motion for summary judgment will be granted. All other motions for summary judgment will be denied. The Court will conduct a hearing and consider evidence related to the validity of the settlement agreement. An appropriate order follows.

¹⁰ On this record, given the multiple conflicts, UNUM's decision would appear to be entitled to significantly less deference than the carrier in Pinto.

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

DOREENE MASONHEIMER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	
	:	NO. 99-5400
COLONIAL PENN GROUP, INC., et al.,	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of September, 2002, upon consideration of:

1) Plaintiff's Motion for Summary Judgment, Defendant UNUM Life Insurance Company of America's Response, and Defendant Colonial Penn Insurance Co.'s Response; 2) Defendant UNUM Life Insurance Company of America's Motion for Summary Judgment, and Plaintiff's Response; and, 3) Defendant Colonial Penn Insurance Co.'s Motion for Summary Judgment, and Plaintiff's Response, and after hearing oral argument from the parties, **IT IS HEREBY**

ORDERED that:

- 1) Defendant Colonial Penn Insurance Co.'s Motion for Summary Judgment is **GRANTED**, and judgment will be entered, at the appropriate time, in favor of Colonial Penn Insurance Co. and the Long-term disability Plan and against Plaintiff;
- 2) Plaintiff's Motion for Summary Judgment is **DENIED**;
- 3) Defendant UNUM Life Insurance Company of America's Motion for Summary Judgment is **DENIED**;
- 4) Discovery on behalf of Plaintiff and Defendant UNUM Life Insurance Company of America shall be completed by **November 25, 2002**;

- 5) The Deputy Clerk shall, at the request of counsel for either party, schedule a settlement conference before the Honorable Diane M. Welsh, United States Magistrate Judge. If counsel does not request a settlement conference, the Deputy Clerk shall schedule final hearing after the close of discovery.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.