

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

<b>LORETTA RIESER,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
v.	:	
	:	
<b>STANDARD LIFE INSURANCE CO. , et al.,</b>	:	<b>No. 03-5040</b>
<b>Defendants.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**June 24, 2004**

Plaintiff Loretta Rieser brings this action alleging violations of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001-1461, against Defendants Standard Insurance Company<sup>1</sup> (“Standard”) and Gross Given Manufacturing Company (“Gross Given”). Presently before this Court are Defendants Standard and Gross Given’s motions for summary judgment.<sup>2</sup> For the reasons set out below, Defendants’ motions are granted.

**I. BACKGROUND**

Plaintiff is the widow of David R. Rieser, who was employed by Gross Given at its Warminster, Pennsylvania facility from February 19, 1952 until January 28, 1998. (Am. Compl. ¶¶ 12.) On January 28, 1998, at the age of sixty-one, Mr. Rieser ceased active employment due to a disability. (*Id.* ¶¶ 12-13.) In the fall of 1997, in anticipation of his leaving active employment, Mr. Rieser met with Gross Given’s Director of Human Resources, David Riccio, who explained that Mr.

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<sup>1</sup> Defendant Standard Insurance Company is incorrectly identified in the caption as Standard Life Insurance Company.

<sup>2</sup> On June 18, 2004, eighteen days after the deadline established in this Court’s Scheduling Order of February 26, 2004, Plaintiff moved for summary judgment. Accordingly, Plaintiff’s motion is denied as untimely.

Rieser would be eligible for both short-term and long-term disability benefits and that his life insurance would continue only during the period he was covered by Gross Given's disability plan. (Riccio Aff. ¶¶ 4-5, 7.) This information was memorialized in a memorandum sent to Mr. Rieser on November 6, 1997. (*Id.* Ex. 1.) The memorandum states:

During the disability period, Gross Given continues your health, life insurance. This coverage would be the same as it is when you begin your disability, including family coverage. Premiums for the insurance would continue to be paid by Gross Given.

(*Id.*) After leaving active employment, Mr. Rieser was granted long-term disability ("LTD") benefits through Gross Given's LTD provider, Standard. (Def. Standard's Mot. for Summ. J., Ex. A at 204, 228 (Administrative R.))

According to the terms of Mr. Rieser's Standard life insurance policy ("Life Policy"), an insured's life insurance benefits continue during the disability period in one of two ways. Under the "Waiver of Premium" provision, life insurance continues without payment of premiums if the individual meets the following criteria: (1) the individual became disabled while insured under the group life policy; (2) the individual was under the age of sixty at the time he became disabled; and (3) the individual is unable to perform with reasonable continuity the material and substantial duties of any occupation for which he is suited in light of his education, training and experience. (*Id.* at 12-13.) In the event that these criteria are not met, premiums must be paid in order to keep the individual's life insurance in force. (*Id.* at 15-16.)

Shortly after becoming disabled, Mr. Rieser applied for a waiver of premium. By letter dated October 14, 1998, Standard reiterated the aforementioned provisions governing the continuation of life insurance during disability and denied his application for a waiver because Mr. Rieser was over the age of sixty when he became disabled. (*Id.* at 316-317.) Furthermore, the letter informed Mr.

Rieser that his life insurance would terminate upon the earlier of the following events: “A. the date of termination of your status as a Member; or B. the cessation of premium payments for your insurance.” (*Id.*) The letter instructed Mr. Rieser to contact Gross Given regarding the status of his membership and premium payments. (*Id.*)

According to the terms of the LTD Policy, Mr. Rieser, who became disabled at age sixty-one, was eligible for a maximum disability benefit period of three years and six months. (*Id.* at 49.) This benefit period began to run when he became eligible for LTD benefits on May 29, 1998. (*Id.* at 34, 228.) Accordingly, Mr. Rieser’s maximum benefit period would end on November 28, 2001. (*Id.* at 284-86.) This information was conveyed to Mr. Rieser in a letter from Standard Life dated April 15, 1999. (*Id.* (“The Gross Given Manufacturing Co[.] group policy states that individuals who become disabled at age 61 are eligible for benefits for a maximum of three years and six months. Therefore, your maximum benefit period would end on November 28, 2001.”).) The November 28, 2001 disability coverage termination date was reiterated in a letter from Standard Insurance on December 4, 2000, and again on November 8, 2001. (*Id.* at 64, 289.) Both Ms. and Mr. Rieser were aware that the disability benefits period would expire on November 28, 2001. (Rieser Dep. at 28-31.)

Despite Gross Given’s commitment to pay Mr. Rieser’s life insurance premiums during his disability period, Gross Given only continued to pay the premiums on Mr. Rieser’s Standard Life Policy from January 28, 1998 until November 1, 2000, (Brady Aff. ¶ 7; Def. Standard’s Reply, Ex. 1 ¶ 11 (Stipulation of Facts)), because on October 31, 2000, Gross Given terminated its agreement with Standard and switched to a new insurance provider, Canada Life Assurance Company (“Canada

Life”).<sup>3</sup> (Def. Standard’s Reply, Ex. 1 ¶ 10 (Stipulation of Facts).) Accordingly, Mr. Rieser’s Standard Life Policy was terminated. On November 13, 2002, Mr. Rieser died at the age of sixty-six, more than two years after the Standard Life Policy was terminated and almost one year after his disability period had ended. (Am. Compl. ¶ 11.)

Thereafter, Ms. Rieser filed claims for benefits with both Standard and Canada Life. (*Id.* ¶ 30.) The Standard Life Policy expressly provides Standard discretionary authority to determine an individual’s eligibility for benefits. The Life Policy provides:

Except for those functions which the Group Policy specifically reserves to the Policyowner, we have full and exclusive authority to control and manage the Group Policy, to administer claims, and to interpret the Group Policy and resolve all questions arising in the administration, interpretation, and application of the Group Policy.

Our authority includes, but is not limited to:

...

3. The right to determine:
  - a. Eligibility for insurance;
  - b. Entitlement to benefits;
  - c. Amounts of benefits payable;

(*Id.* at 6 (Life Policy), 344 (Summ. Plan Description).) Canada Life possesses similar discretionary authority in determining benefit eligibility. (Def. Gross Given’s Mot. for Summ. J., Ex. 3 at 7, 30 (Canada Life Plan).) Ms. Rieser’s claims and subsequent appeals were denied. (*Id.* ¶ 31.)

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<sup>3</sup> This Court has not been presented with any evidence demonstrating that Gross Given paid premiums to any life insurance provider on Mr. Rieser’s behalf after November 1, 2000.

## II. STANDARD OF REVIEW

Summary judgment is appropriate when the admissible evidence fails to demonstrate a dispute of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c) (1994); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When the moving party does not bear the burden of persuasion at trial, the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thereafter, the nonmoving party demonstrates a genuine issue of material fact if sufficient evidence is provided to allow a reasonable jury to find for him at trial. *Id.* at 248. In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Pøds .*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

## III. DISCUSSION

### A. Standard's Motion for Summary Judgment

Counts I and IV of Plaintiff's Amended Complaint assert claims under ERISA for wrongful denial of life insurance benefits. Standard moves for summary judgment arguing that Mr. Rieser was not entitled to benefits because the Life Policy terminated two years before his death.<sup>4</sup> In response,

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<sup>4</sup> In his initial response to Defendant's motion, Plaintiff informed the Court that he needed additional time to complete discovery to "file a more complete response to the motion." (Pl.'s Resp. at 6.) By Order of May 26, 2004, this Court granted Plaintiff's request. Plaintiff's

Plaintiff fails to identify any evidence demonstrating that Mr. Rieser was covered by a Standard Life Policy at the time of his death. Therefore, as the following analysis demonstrates, Defendant Standard Life is entitled to summary judgment.

In *Firestone Tire & Rubber Co. v. Bruch*, the Supreme Court held that courts should review a denial of ERISA plan benefits 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.” *Abnathya v. Hoffmann-La Roche, Inc.*, 2 F.3d 40, 45 (3d Cir. 1993) (citing *Firestone*, 489 U.S. 101, 115 (1989)). When the plan confers such discretion, the “arbitrary and capricious” standard applies. *Smathers v. Multi-Tool, Inc./Multi-Plastics, Inc. Employee Health & Welfare Plan*, 298 F.3d 191, 194 (3d Cir. 2002). Under the arbitrary and capricious standard, a court will uphold a plan administrator’s interpretation of a plan if it is reasonable, i.e., “unless the administrator's decision was ‘without reason, unsupported by substantial evidence, or erroneous as a matter of law.’” *Doyle v. Nationwide Ins. Co. & Affiliates Employee Health Care Plan*, 240 F. Supp. 2d 328, 335 (E.D. Pa. 2003) (citing *Pinto v. Reliance Standard Life Ins. Co.*, 214 F.3d 377, 393 (3d Cir. 2000)). “This scope of review is narrow, and the court is not free to substitute its own judgment for that of the [administrator] in determining eligibility for plan benefits.” *Mitchell v. Eastman Kodak Co.*, 113 F.3d 433, 440 (3d Cir. 1997). The highly deferential standard of review announced in *Firestone*, however, has been slightly eroded by the Third Circuit in cases in which the ERISA insurer is operating under a conflict of interest. In *Pinto v. Reliance Standard Life Insurance Company*, the Third Circuit held that when an insurer both decides claims and pays

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supplemental brief, however, includes only one page of responsive argument, stating that “there is no need for lengthy argument.” (PI’s Supplemental Resp. at 3.)

benefits, the arbitrary and capricious standard should be modified using a “sliding scale method, intensifying the degree of scrutiny to match the degree of the conflict.” 214 F.3d 377, 379 (3d Cir.2000).

In this case, the Standard Life Policy expressly provides Standard discretionary authority to determine an individual’s eligibility for benefits. (Def. Standard’s Mot. for Summ. J. Ex A at 6 (Life Policy), 344 (Summary Plan Description)); *see Abnathya*, 2 F.3d at 45 (finding deferential review required in light of similar plan provision). Accordingly, the arbitrary and capricious standard applies but must be adjusted to account for level of conflict. Because Standard’s decision in this case is based upon interpretation of straight-forward eligibility provisions, rather than the assessment of complicated and conflicting medical evidence that led the *Pinto* Court to adjust the *Firestone* standard, this Court will adjust the level of scrutiny accordingly and conduct a slightly more penetrating review that would otherwise be appropriate under the arbitrary and capricious standard. *Pinto*, 214 F.3d at 393 (“[D]istrict courts [must] consider the nature and degree of apparent conflicts with a view to shaping their arbitrary and capricious review of the benefits determinations of discretionary decisionmakers.”); *see Stratton v. I.E. Dupont de Nemours & Co.*, 363 F.3d 250, 255 (3d Cir. 2004) (affirming district court’s application of a “slightly” heightened arbitrary and capricious standard because “[Plaintiff] alleges no facts that would give rise to an inference of conflict other than the fact that DuPont both funds and ultimately administers its own plan”).

Subjecting Standard’s decision to heightened arbitrary and capricious review, this Court finds that Standard’s denial of Mr. Rieser’s benefits was reasonable and clearly supported by the evidence in the record, as Gross Given stopped paying Mr. Rieser’s Life Policy premiums over two years before he died. The Life Policy required, as Mr. Rieser was aware, that premium payments must

continue to keep Mr. Rieser's life insurance coverage in force during the period of his disability. (Riccio Aff., Ex. 1; Def. Standard's Mot. for Summ. J., Ex. A. at 316-317 (Oct. 14, 1998 Letter.) It is undisputed that Gross Given continued to pay Mr. Rieser's life insurance premiums to Standard from January 28, 1998 until November 1, 2000. (Brady Aff. ¶ 7; Def. Standard's Reply, Ex. 1 ¶ 11 (Stipulation of Facts).) On October 31, 2000, Gross Given terminated the Standard Life Policy and switched to a new insurance provider. (Def. Standard's Reply Ex. 1 ¶ 10 (Stipulation of Facts).) Therefore, when Mr. Rieser died on November 18, 2002, almost one year after Standard had received the last premium payment on behalf of Mr. Rieser, the Life Policy had long since terminated.<sup>5</sup> Therefore, as Plaintiff has failed to adduce any evidence to suggest that Standard's denial of benefits was unreasonable, Defendant's motion is granted.

Plaintiff makes the additional argument, which is only tenuously grounded in any allegation or claim in the Amended Complaint, that she is entitled to benefits because Standard did not give notice that Mr. Rieser's life insurance coverage had terminated when his employer switched insurance providers. Even if such notice were required from Standard, however, the Third Circuit has repeatedly held that substantive remedies are generally not available for violation of ERISA's procedural requirements. *Ackerman v. Warnaco, Inc.*, 55 F.3d 117, 124 (3d Cir. 1995); *see also Hozier*, 908 F.2d at 1169-70 (declining to find an implied remedy for violation of ERISA's reporting and disclosure requirements); *Berger*, 911 F.2d at 921 (“[T]his Circuit has apparently rejected the reasoning that substantive remedies, such as the severance pay the Employees seek on appeal, are available for violations of ERISA's procedural requirements.”). Instead, the Third Circuit has

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<sup>5</sup> Even if Mr. Rieser had qualified for the waiver of premium, this waiver would have expired when he turned sixty-five, over one year before his death at age sixty-six. (Def. Standard's Mot. for Summ. J., Ex. A at 12; Am. Compl. ¶ 11.)

recognized that substantive remedies are only available in “extraordinary circumstances,” *see Gridley v. Cleveland Pneumatic Co.*, 924 F.2d 1310, 1319 (3d Cir. 1991), such as when “the employer has acted in bad faith, or has actively concealed a change in the benefit plan,” *Ackerman*, 55 F.3d at 125. In the instant case, none of the allegations in Plaintiff’s complaint allege that Standard acted in bad faith or actively concealed a change in the life policy. Furthermore, Plaintiff has presented no evidence, through deposition testimony, affidavits, documentary evidence, or otherwise, in support of such an allegation. Regardless, even if Gross Given had continued, despite switching to Canada Life, to make payments to Standard for the duration of Mr. Rieser’s disability period, these payments would have ceased at the end of his disability period, almost one year before his death. Thus, he would not have been entitled to benefits under the Life Policy at the time of his death under any situation.

**B. Gross Given’s Motion for Summary Judgment**

Plaintiff asserts two causes of action under ERISA against Gross Given. Count III alleges that Gross Given was responsible for paying Mr. Rieser’s life insurance claim and Count IV alleges that Gross Given had an obligation to “ensure that payment [of Mr. Rieser’s life insurance benefits] was made” and failed to do so. Gross Given moves for summary judgment arguing that it had no obligation to pay Mr. Rieser’s benefits after November 2001 and did not make any affirmative misrepresentations regarding Mr. Rieser’s benefits that would expose it to liability under ERISA.

A plan participant or beneficiary may assert a claim for wrongful denial of benefits pursuant to § 502(a)(1)(B) of ERISA. 29 U.S.C. § 1132(a)(1)(B). Such claims may be brought against the plan itself or persons who are shown to have control over administration of the plan in their fiduciary capacity. *Curcio v. Hancock Mutual Life Ins. Co.*, 33 F. 3d 226, 233 (3d Cir. 1994.) As Gross Given

is clearly not the plan, this Court must determine whether Gross Given is liable in a fiduciary capacity. The Third Circuit has defined the relevant inquiry as follows:

Our task, simply stated, is to resolve whether [the employer] maintained any authority or control over the management of the plan's assets, management of the plan in general, or maintained any responsibility over the administration of the plan.

*Curcio*, 33 F.3d at 233; *see also Edwards v. Continental Airlines*, No. Civ. A. 98-6039, 1999 WL 95719, at \*2, 1999 U.S. Dist. LEXIS 67, at \*5 (E.D. Pa. Jan. 7, 1999) (“An employer may have fiduciary status under ERISA . . . to the extent it exercises discretion in the administration or management of a plan.”).

As previously quoted, the Life Policy gives Standard broad authority in administering the policy:

Except for those functions which the Group Policy specifically reserves to the Policyowner, we have full and exclusive authority to control and manage the Group Policy, to administer claims, and to interpret the Group Policy and resolve all questions arising in the administration, interpretation, and application of the Group Policy.

(Def. Standard's Mot. for Summ. J., Ex. A at 6 (Life Policy); 344 (Summary Plan Description).) In addition, both Standard and Gross Given's Director of Human Resources attested that Gross Given did not have any authority to determine eligibility for life insurance benefits under the policy and was not involved in the decision to deny benefits to Ms. Rieser. (Def. Standard's Reply, Ex. 1 ¶¶ 8-9 (Stipulation of Facts).); *see also Ricco Dep.* at 15-16 (describing Gross Given's role in Plan).) As Plaintiff has failed to produce any evidence that Gross Given had any authority or responsibility for administering benefits under the Standard Life Policy generally, or in Mr. Rieser's case particularly, Gross Given cannot be subject to liability under § 502(a)(1)(B) and is therefore entitled to summary judgment on Plaintiff's claim for wrongful denial of benefits.

Furthermore, Gross Given argues that it did not make any affirmative misrepresentations or provide misleading information regarding Mr. Rieser's life insurance benefits that could expose it to liability under ERISA. *Curcio*, 33 F.3d at 235 (“We have held that an employer can be liable under ERISA in its fiduciary capacity for making affirmative misrepresentations on breach of fiduciary duty and equitable estoppel theories.”). Plaintiff claims that the memorandum provided by Gross Given's Director of Human Resources, Mr. Riccio, was misleading because it suggested that “Gross Given would continue to pay the premiums for plaintiff's husband's life insurance and that such life insurance would remain in effect for as long as he lived.” (Pl.'s Resp. to Mot. for Summ. J. at 3.) In support of this proposition, Plaintiff quotes the following language in the memorandum provided to Mr. Rieser after his consultation with the Mr. Riccio:

Your compensation from the long term [disability] carrier would continue until you reach the age of 65. When this happens, your compensation would be lowered by the amount of Social Security paid to you though Social Security Disability insurance.

...

During the disability period, Gross Given continues your health, life insurance.

(Riccio Aff. Ex. 1.) This quotation, however, is an accurate description of the compensation to which Mr. Rieser would be entitled under the LTD policy. The memorandum does not provide any information about the length of the long term disability period and certainly does not suggest that the disability period is boundless. To the contrary, Mr. Riccio informed Mr. Rieser prior to writing this memorandum that his life insurance benefits would be coterminous with his disability period, (*Id.* ¶¶ 7-8.), and Mr. Rieser received numerous notifications that his disability period would terminate on November 28, 2001. Accordingly, Plaintiff has proffered no evidence that Gross Given misrepresented the terms of the policy.

Finally, in her response, Plaintiff argues that Gross Given actively concealed a change in

providers that deprived Ms. Rieser of life insurance proceeds. It appears from the record before this Court that Gross Given did not in fact continue to pay Mr. Rieser's life insurance premiums to Standard throughout his disability period in accordance with the representation quoted above. Rather, Gross Given ceased paying premiums to Standard when it switched insurance providers. In fact, this Court has not been provided with any evidence to suggest that premiums were paid on Mr. Rieser's behalf to any insurance provider after November 2000. Nevertheless, Mr. Rieser died on November 13, 2002, approximately one year after his disability coverage and Gross Given's concomitant obligation to pay his life insurance premiums ended. Accordingly, even if Gross Given had continued to pay Mr. Rieser's Life Policy premiums during his disability period, he would not have been covered at his death, and so Ms. Rieser cannot recover.

#### **IV. CONCLUSION**

In conclusion, the Court grants Defendants Standard Insurance Company and Gross Given's motions for summary judgment. An appropriate Order follows.

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

<b>LORETTA RIESER,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>STANDARD LIFE INSURANCE CO. , et al.,</b>	:	<b>No. 03-5040</b>
<b>Defendants.</b>	:	

**AND NOW**, this 24<sup>th</sup> day of **June, 2004**, upon consideration of Defendant Standard Insurance Company's Motion for Summary Judgment, Defendant Gross Given Manufacturing Company's Motion for Summary Judgment, and all responses thereto and replies thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant Standard Insurance Company's Motion for Summary Judgment (Document No. 29) is **GRANTED**.
2. Defendant Gross Given's Motion for Summary Judgment (Document No. 48) is **GRANTED**.
3. Judgment is entered in favor of Defendants Standard Insurance Company and Gross Given Manufacturing Company and against Plaintiff.
4. The Clerk of Court is directed to close this case.

**BY THE COURT:**

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**Berle M. Schiller, J.**