

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

THERESA DEGUISEPPE	:	
Plaintiff,	:	
v.	:	No. 04-4348
	:	
VERTIS, INC., WEBCRAFT, LLC, and	:	
HARTFORD LIFE AND ACCIDENT,	:	
INSURANCE COMPANY,	:	
Defendants.	:	

MEMORANDUM

GREEN, S.J.

September , 2005

Presently pending are Defendants' Vertis and Webcraft's, and Defendant Hartford's Motions to Strike Plaintiff's Second Amended Complaint, or in the Alternative, to Dismiss Count I, II, and IV of Plaintiff's Second Amended Complaint (docket no. 19 and 18 , respectively), and Plaintiff's Answer in Opposition thereto. Also pending is Plaintiff's Motion for Leave of Court to File Second Amended Complaint (docket no. 22), and Defendants' Responses in Opposition thereto. For the reasons set forth below, Plaintiff's Second Amended Complaint will be accepted. Defendants' motions to dismiss are construed as against Plaintiff's Second Amended Complaint. Defendant Webcraft's Motion to Dismiss Plaintiff's Second Amended Complaint will be denied. Defendant Hartford's Motion to Dismiss Plaintiff's Second Amended Complaint will also be denied.

BACKGROUND

The parties agree to pertinent factual background in this matter: in summary, Plaintiff is the widow of Edward DeGuiseppe. Mr. Deguiseppe was an employee of Defendant Webcraft from 1993 until his death in March 2001. Defendant Webcraft is wholly owned by Defendant Vertis. As an employee of Defendant Webcraft, the decedent participated in Webcraft's group life insurance plan. The group life insurance plan provided both basic and

supplemental life insurance options. The supplemental policy was underwritten by Defendant Hartford.

The decedent was automatically qualified for, and enrolled in, the basic life insurance option for \$55,000.00. During an open enrollment period in January 2000, he applied for an additional \$200,000.00 of supplemental life insurance. Because the decedent enrolled in the supplemental life insurance plan more than 31 days after originally becoming eligible for such, he was required to submit a Personal Health Statement as evidence of insurability under the plan. Defendant Webcraft states that Mr. DeGuiseppe received an interoffice memorandum instructing him to complete the Personal Health Statement and forward it to Defendant Hartford in order to be eligible for the supplemental life insurance. Defendant Webcraft also states that the memorandum informed Mr. DeGuiseppe that Webcraft could not deduct weekly premiums for the supplemental life insurance from his paycheck until it received written approval from Hartford. Plaintiff claims that from March 2000 until the time of decedent's death in March 2001, Webcraft deducted weekly premiums as payment for the \$200,000.00 of supplemental life insurance. Plaintiff, however, does not know if the decedent ever returned the Personal Health Statement to Defendant Hartford. Hartford claims that it never received the Personal Health Statement from Mr. DeGuiseppe.

Mr. DeGuiseppe died on March 17, 2001 due to an acute myocardial infarction. Shortly thereafter Webcraft, on Plaintiff's behalf, submitted a claim to Hartford for the supplemental life insurance proceeds. Hartford denied the claim on the basis that the decedent never returned the evidence of insurability, or Personal Health Statement, to Hartford. Plaintiff appealed Hartford's decision to Hartford's Appeal Unit which upheld the earlier denial of Plaintiff's claim for the supplemental life insurance benefits.

Plaintiff seeks the payment of benefits she claims is due under the supplemental life insurance policy, declaratory and injunctive relief finding the Defendants in violation of

ERISA, a declaratory order that Defendants are estopped from denying the claimed benefits, and the award of attorneys fees and prejudgment interest.

MOTIONS TO DISMISS

In her Second Amended Complaint, Plaintiff listed four Counts: Count I (ERISA § 404(a)(1)(A), Breach of Fiduciary Duty); Count II (violation of ERISA § 502(a)(3)(B), 29, U.S.C. § 1132(a)(3)(B)); Count III (violation of ERISA §502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B); and Count IV (Equitable Estoppel). Each Defendant moves to strike Plaintiff's Second Amended Complaint because Plaintiff failed to obtain leave of court prior to filing her Second Amended Complaint. In the alternative Defendants Webcraft and Vertis seek to have Counts I, II, and IV of the Second Amended Complaint dismissed for failure to state a claim for which relief can be granted. Defendants Webcraft and Vertis assert that only two provisions of ERISA permit claims for breach of fiduciary duty, ERISA §§ 502(a)(2) and 502(a)(3). They argue that Plaintiff is not entitled to recovery pursuant to ERISA § 502(a)(2) because damages sought thereunder must inure to the benefit of the plan and not to a single person's benefit. Defendants Webcraft and Vertis also argue that Plaintiff cannot maintain her claims under ERISA § 502(a)(3) while simultaneously seeking relief under ERISA § 502(a)(1)(B) - Count III of Plaintiff's Complaint. Defendants Webcraft and Vertis finally argue that Count IV of the Second Amended Complaint - Plaintiff's claim for equitable estoppel - must be dismissed because an equitable estoppel claims is premised upon state law and is therefore preempted by ERISA. Otherwise, Defendants Webcraft and Vertis posit that any other equitable claim made pursuant to ERISA cannot be made simultaneously with claims arising under ERISA § 502(a)(1)(B).

Defendant Hartford similarly moves for dismissal of Counts I, II, and IV of Plaintiff's Second Amended Complaint and argues that Plaintiff has impermissibly attempted to fashion her claim not only as one for monetary relief, pursuant to ERISA §502(a)(1)(B), but also

as a claim for equitable relief under ERISA § 502(a)(3). Defendant Hartford argues that because ERISA provides an adequate remedy at law for an alleged wrongful denial of benefits under ERISA § 502(a)(1), Plaintiff's claims for equitable relief must be dismissed. Defendant Hartford finally argues that because Hartford did not make a misrepresentation to the decedent upon which he relied to his detriment, Plaintiff's equitable claim against Hartford must also be dismissed.

DISCUSSION

As an initial matter, Plaintiff's motion for leave to file a Second Amended Complaint will be granted. The court notes that Plaintiff did not first seek leave of court to file a Second Amended Complaint, however, neither of Defendants have been prejudiced in any way by Plaintiff's filing of a Second Amended Complaint. Therefore, Plaintiff's Motion for Leave to File a Second Amended Complaint will be granted and Defendants' Motion to Strike Plaintiff's Second Amended Complaint for failure to seek leave to file will be denied. Defendants' motions will be applied to Plaintiff's Second Amended Complaint. Regarding Defendants' motions to dismiss Counts I, II, and IV of Plaintiff's Second Amended Complaint, a court may dismiss counts of a complaint for failure to state a cause of action only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.

Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S.Ct 992, 998 (2002). The court "must take all the well pleaded allegations as true and construe the complaint in the light most favorable to the plaintiff." Colburn v. Upper Darby Twp., 838 F.2d 663, 665-66 (3d Cir. 1988).

The civil enforcement provisions of ERISA are governed generally by ERISA § 502, 29 U.S. §1132. Section 1132 of 27 U.S.C. provides, in relevant part:

(a) Persons empowered to bring a civil action

A civil action may be brought—

- (1) by a participant or beneficiary—
 - (A) for the relief provided for in subsection (c) of this section, or
 - (B) 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;

- (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

- (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

Section §502(a)(1)(B) governs claims for the alleged wrongful denial of benefits. Section § 502(a)(3) is a “catchall” provision under which claims for equitable relief may be pursued.

In her Complaint, Plaintiff seeks relief under both § 502(a)(1)(B) - in which she seeks to recover benefits she alleges are due her under the terms of the supplemental life insurance plan, and also under § 502(a)(3) - where she seeks equitable relief declaring her entitled to the benefits she claims are due. Plaintiff further alleges that Defendants failed to disclose to the decedent material facts, known to Defendants but unknown to him, which he needed to know for his own protection. She also alleges that Defendants made material misrepresentations to the decedent regarding his eligibility for, and enrollment in, the supplemental life insurance plan.

Count III of Plaintiff’s Complaint is a straightforward claim for Plaintiff to recover benefits she claims are due under the terms of the supplemental life insurance plan. She brings this claim pursuant to ERISA § 502(a)(1)(B). No Defendant has moved for dismissal of this claim. Instead Defendants argue that Plaintiff cannot simultaneously pursue this claim as well as a claim under ERISA § 502(a)(3). The court will address these arguments first. Defendants heavily rely on their contentions that Plaintiff cannot simultaneously maintain equitable and estoppel claims pursuant to ERISA § 502(a)(3), and claims at law pursuant to

ERISA § 502(a)(1)(B). However, this court concludes that Plaintiff may pursue claims under ERISA § 502 (a)(1)(B) and also under the alternative theory of liability arising pursuant to ERISA's "catch all" equitable provision, ERISA § 502(a)(3). Federal Rule of Civil Procedure 8(e) permits a party to plead alternative theories of recovery. Defendant has not provided this court with authority holding that rule 8(e) does not apply to ERISA actions. Federal court requires notice pleading such that a complaint must contain only a short, concise statement of the case. In Swierkiewicz, the United States Supreme Court, quoting Scheure v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683 (1974), stated that "[w]hen a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether a plaintiff is entitled to offer evidence to support the claims." Swierkiewicz, 122 S.Ct. at 998. The Court further expounded upon the simplified notice pleading standard required by Fed.R.Civ.P. 8(a)(2), stating that it ". . . relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to *dispose of unmeritorious claims.*" Id.

I agree with Judge Reed's reasoning in Parente v. Bell Atlantic-Pennsylvania, 2000 WL 419981 (E.D. of PA, April 18, 2000) on the issue of pleading both legal and equitable claims for relief under ERISA. In that case Judge Reed held that a determination cannot be made on a motion to dismiss involving viable claims under both ERISA §§ 502(a)(1)(B) and 502(a)(3) because at this stage of the proceedings - on a motion to dismiss - it is not clear whether § 502(a)(1)(B) will in fact provide Plaintiff with adequate relief. "Only when the judicial process establishes the extent of the relief provided to Plaintiff by [§502(a)(1)(B)] may the court proceed to the question of whether equitable relief is available and appropriate under [§ 502(a)(3)]." Id. at 3. Moreover, in Varity Corp. v. Howe, 516 U.S. 489, 116 S.Ct. 1065 (1996) the United States Supreme Court affirmed the District Court's post-trial entry of a preliminary injunction in a group of former employees' favor, holding that the former employee members of

a plan were able to pursue equitable claims pursuant to § 502(a)(3) because as former members of the plan in dispute relief was not available to them under § 502(a)(1)(B) and no other avenue of relief was available to them. This holding supports the conclusion that a determination on whether or not Plaintiff is entitled to equitable relief should be deferred pending determination of the availability of legal relief. Therefore, Plaintiff is entitled to pursue both claims at this time. The relief if any, legal or equitable, must depend on the evidence produced after Defendants have answered and discovery is completed. Accordingly, Defendants' motions to dismiss will be denied.

An appropriate Order follows.

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HARTFORD LIFE AND ACCIDENT,	:	
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ORDER

Presently pending are Defendants' Vertis and Webcraft's , and Defendant Hartford's Motions to Strike Plaintiff's Second Amended Complaint, or in the Alternative, to Dismiss Count I, II, and IV of Plaintiff's Second Amended Complaint (docket no. 19 and 18 , respectively). Also pending is Plaintiff's Motion for Leave of Court to File Second Amended Complaint (docket no. 22). **AND NOW**, this 15th day of September, 2005 **IT IS HEREBY**

ORDERED that:

1. Defendant Vertis and Webcrafts' Motion to Strike Plaintiff's Complaint is **DENIED**.
2. Defendant Vertis and Webcraft's Alternative Motion to Dismiss Counts I, II, and IV of Plaintiff's Second Amended Complaint is **DENIED**.
3. Defendant Hartford's Motion to Strike Plaintiff's Complaint is **DENIED**.
4. Defendant Hartford's Alternative Motion to Dismiss Counts I, II and IV of Plaintiff's Second Amended Complaint is **DENIED**.
5. Plaintiff's Motion for Leave to File a Second Amended Complaint is **GRANTED**.

BY THE COURT:

S/_____

CLIFFORD SCOTT GREEN