

2009 WL 10687894
Only the Westlaw citation is currently available.
United States District Court,
W.D. Tennessee, Western Division.

Cynthia B. WINCHESTER, Plaintiff,
v.
UNUM LIFE INSURANCE COMPANY OF
AMERICA, Defendant.

No. 07-2724-JPM
|
Signed 01/26/2009

Attorneys and Law Firms

John I. Houseal, Jr., Don Lester Hearn, Jr., Glankler Brown, PLLC, Richard L. Winchester, Jr., The Winchester Law Firm, Memphis, TN, for Plaintiff.

Kelly D. **Simpkins**, Kenna L. Mansfield, Wells Marble & Hurst, PLLC, Ridgeland, MS, for Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT TO PLEAD THE REMEDY OF
STATUTORY PENALTIES UNDER ERISA
502(c)(1)(B), 29 U.S.C. § 1132(c)(1)(B) FOR FAILURE
TO PROVIDE REQUIRED DOCUMENTS UNDER
ERISA**

JON PHIPPS McCALLA, UNITED STATES DISTRICT
JUDGE

*1 Before the Court is Plaintiff Cynthia B. Winchester's ("Plaintiff") Motion for Leave to File a Second Amended Complaint to Plead the Remedy of Statutory Penalties Under ERISA 502(c)(1)(B), 29 U.S.C. § 1132(c)(1)(B) for Failure to Provide Required Documents Under ERISA (Doc. 62), filed December 17, 2008. Defendant Unum Life Insurance Company of America ("Defendant") filed a response in opposition (Doc. 64) on January 5, 2009. For the reasons stated below, Plaintiff's motion is DENIED.

I. BACKGROUND

This case originally comes before the Court on Plaintiff's claim to recover long-term disability benefits pursuant to

the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 et seq. Specifically, Plaintiff states that she suffered a head injury at her place of employment and was therefore unable to maintain full-time employment. (First Amend. Compl. ¶ 11.) Plaintiff alleges that following this injury, Defendant wrongfully denied her long-term disability benefits. (Id., at 32.) Plaintiff asserts that Defendant's decision to terminate her benefits relied on an inadequate neuro-psychological exam administered by Pamela Auble, Ph.D., an expert selected and retained by Defendant. (Id. at ¶¶ 22-25.) Plaintiff further alleges that she was denied a fair opportunity to appeal Defendant's decision. (Id. ¶¶ 26-28.) Plaintiff seeks to recover any disability benefits she was improperly denied, among other relief.

In the instant motion, Plaintiff requests leave to amend her complaint to seek relief under 29 U.S.C. § 1132(c)(1)(B), ERISA § 502(c)(1)(B), for failure of Defendant to provide testing data of Auble, pursuant to Plaintiff's written request for such documents.

II. Analysis

Under Federal Rule of Civil Procedure 15, a party may amend its pleading "once as a matter of course" before a responsive pleading is served. All further amendments require leave of court, and courts shall "freely give leave when justice so requires." FED. R. CIV. P. 15(a)(2). Leave is not granted when there is "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party" or when the amendment would be futile. Foman v. Davis, 371 U.S. 178, 182 (1962).

When a motion to amend a complaint is brought at a "late stage" in litigation, the movant has an "increased burden" to show justification for the failure to move earlier. Duggins v. Steak 'N Shake, Inc., 195 F.3d 828, 834 (6th Cir. 1999) (citing Holland v. Metro. Life Ins. Co., 869 F.2d 1490 (6th Cir. 1989)). Here, Plaintiff has offered no justification for her failure to seek leave earlier in the litigation. Moreover, Plaintiff has known of the basis for her proposed amendment for more than one year. Plaintiff alleged in her First Amended Complaint, filed January 11, 2008, that Defendant denied her documents she requested on numerous occasions. (See First Amend. Compl. ¶ 34.) Plaintiff made a similar reference in her Reply to Defendant's Motion for Judgment on the Administrative Record, filed April 17, 2008 (Doc. 30 11-12.) Nevertheless, Plaintiff provides no reason for waiting

nearly one year before seeking to add her proposed claim.

*2 Plaintiff argues that Defendant would not be prejudiced by the Court permitting her to amend her complaint at this late stage in the case, but the Court disagrees. “[A]llowing amendment after the close of discovery creates significant prejudice.” [Duggins](#), 195 F.3d at 834 (citing [Moore v. City of Paducah](#), 790 F.2d 557, 562 (6th Cir. 1986)). Although Plaintiff’s proposed amendment would likely not result in any significant additional discovery, it will require further briefing by the parties and delay the ruling on the parties’ current dispositive motions. Significantly, penalties imposed under 29 U.S.C. § 1132(c)(1)(B) accrue on a daily basis, so Plaintiff’s delay could result in Defendant paying a higher penalty. Therefore, in light of the untimely nature of Plaintiff’s motion and the prejudice the proposed

amended complaint would cause Defendant, Plaintiff’s motion is DENIED.

III. Conclusion

For the foregoing reasons, Plaintiff’s Motion is DENIED.

SO ORDERED this 26th day of January, 2009.

All Citations

Slip Copy, 2009 WL 10687894

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.