

**H**Fish v. Unum Life Ins. Co. of America  
 M.D.Fla.,2005.

United States District Court,M.D. Florida,  
 Orlando Division.

Charles FISH, Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY OF AMERICA,  
 Defendant.

**No. 6:04-CV-1716-ORL-22J.**

Aug. 19, 2005.

**Background:** Employee brought suit under Employee Retirement Income Security Act (ERISA) against plan administrator after he was denied long-term disability insurance benefits under plan. Administrator moved for protective order after employee noticed depositions.

**Holding:** The District Court, [Glazebrook](#), United States Magistrate Judge, held that participant was entitled to limited discovery regarding basis for denial of long-term disability benefits, possible conflict of interest, and any other facts that were known to administrator at time of its decision but were not reflected in administrative record. Motion denied.

West Headnotes

**Federal Civil Procedure 170A** 1264

[170A](#) Federal Civil Procedure  
[170AX](#) Depositions and Discovery  
[170AX\(A\)](#) In General  
[170Ak1264](#) k. Actions in Which Remedy Is Available. [Most Cited Cases](#)

**MOTION FOR DEFENDANT'S  
 MOTION FOR  
 PROTECTIVE ORDER  
 TO QUASH NOTICES  
 OF TAKING  
 DEPOSITIONS (Doc. No.  
 21)**

**Federal Civil Procedure 170A** 1358

[170A](#) Federal Civil Procedure  
[170AX](#) Depositions and Discovery  
[170AX\(C\)](#) Depositions of Parties and Others Pending Action  
[170AX\(C\)2](#) Proceedings  
[170Ak1355](#) Orders for Protection of Parties and Deponents Before Oral Examination  
[170Ak1358](#) k. Order That Deposition Be Not Taken. [Most Cited Cases](#)

Participant was entitled to limited discovery in ERISA case regarding basis for denial of long-term disability benefits, possible conflict of interest, and any other facts that were known to administrator at time of its decision but were not reflected in administrative record, and thus administrator did not show good cause for protective order prohibiting taking of depositions, notwithstanding that arbitrary and capricious standard appeared to apply to administrator's determinations and that review would be limited to "facts known to administrator." Employee Retirement Income Security Act of 1974, § 502, [29 U.S.C.A. § 1132](#); [Fed.Rules Civ.Proc.Rule 30, 28 U.S.C.A.](#)

\*699 [John V. Tucker](#), The Law Offices of Anderson & Tucker, St. Petersburg, FL, for Plaintiff.  
[Timon Sullivan](#) and [Wm. Jere Tolton](#) of Ogden & Sullivan, P.A., Tampa, FL, for Unum.

**ORDER**

[GLAZEBROOK](#), United States Magistrate Judge.  
 This cause came on for consideration without oral argument on the following motion filed herein:

**FILED: July 25, 2005**

**THEREON** it is **ORDERED** that the motion is **DENIED**.

Plaintiff, Charles Fish, sues Defendant, Unum Life Insurance Company of America (“Unum”), in a civil enforcement action under § 501(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, [29 U.S.C. §§ 1001](#), *et seq.* (“ERISA”). Unum was the carrier of a long term disability (“LTD”) policy for Fish's employer and administers claims made under the plan. Fish claims that Unum wrongfully denied his claim for LTD benefits under the plan. Fish has noticed the depositions of five individuals <sup>FN1</sup> and of the corporate representative pursuant to [Fed.R.Civ.P. 30\(b\)\(6\)](#). Unum moves \*700 for a protective order to prevent the taking of all of the depositions.

<sup>FN1</sup>. Subsequent to the filing of Unum's motion, Fish withdrew the notice of deposition for Dr. Robert Coddington. The remaining individuals noticed for deposition are: (1) Janet Fox, Customer Care Specialist, who issued the initial letter of denial on the LTD claim; (2) Teresa Ward, Lead Appeals Specialist, who issued the final decision letter upholding the initial denial; (3) Dorothy C. Edwards, a vocational consultant who conducted an occupational analysis of Fish's job position; (4) Mandy Alexander, a registered nurse who reviewed the medical records received from Fish's primary physician; and (5) Dr. Charles Sternbergh, a board certified orthopedic physician who conducted a clinical review and analysis of Fish's medical records.

Unum first argues that the depositions will not lead to relevant evidence because, in an ERISA civil enforcement action under a discretion-vesting plan, evidence is limited to the “administrative record.” Unum also objected to specific categories listed in the [Fed.R.Civ.P. 30\(b\)\(6\)](#) deposition notice, primarily on the basis that the subjects about which testimony is sought concern the thought processes of Unum personnel. <sup>FN2</sup>

<sup>FN2</sup>. In response to two of the categories for the [Fed.R.Civ.P. 30\(b\)\(6\)](#) deposition, Defendant also objected on the grounds that the information sought was confidential and/or proprietary information without providing any argument to

the Court so that it could evaluate the objection. If the information truly is confidential or proprietary, the Court expects the parties to meet and confer in an effort to agree to an appropriate protective order.

In opposition, Fish does not concede that Unum states the correct standard of review because he claims that he has not been provided with evidence that the benefit plan properly makes an express grant of discretionary authority to the decision-maker. Fish further argues that the Court's review is not limited to the administrative case file, but that the Court also may consider additional evidence of facts known to Unum at the time Unum made its decision. Fish claims the depositions are necessary on the issues of the insurer's potential conflict of interest, the reasonableness of Unum's decision, and may lead to the discovery of other admissible evidence of facts considered by Unum at the time it denied Fish's claim for benefits.

#### A. Applicable Standard Of Review

ERISA's civil enforcement statute, ERISA § 502, [29 U.S.C. § 1132](#), provides no guidance regarding the standard of review to be employed in a claim for welfare benefits. However, in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989), the Supreme Court held:

[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.* at 115, 109 S.Ct. 948. *Providence v. Hartford Life and Accident Ins. Co.*, 357 F.Supp.2d 1341, 1344 (N.D.Fla.2005).

The United States Court of Appeals for the Eleventh Circuit has established three possible standards of review to be applied by a District Court in reviewing an ERISA benefit determination: (1) *de novo*-when the plan administrator making the ultimate decision is not given discretion by the plan's terms; (2) arbitrary and capricious

(also known as abuse of discretion)-when a plan's terms grant the administrator discretion; or (3) heightened arbitrary and capricious-when there is a conflict of interest-as when an administrator both insures the plan and makes the final claims decision. [Buckley v. Metropolitan Life](#), 115 F.3d 936, 939 (11th Cir.1997); [HCA Health Services v. Employers Health Ins. Co.](#), 240 F.3d 982, 993 (11th Cir.2000).

At this time, the parties have not moved to have the Court determine the applicable standard of review. Nonetheless, the resolution of this motion for a protective order requires an evaluation of the standard of review. The parties have submitted certain plan documents in which it does appear that discretionary authority has been granted to Unum in accordance with the law of ERISA. [See Docket 21-3, page 11, "Certificate Section," "When making a benefit determination under the policy, Unum has discretionary authority to determine your eligibility for benefits and to interpret the terms and provisions of the policy."] At this time, Plaintiff does not agree that either the arbitrary and capricious or the heightened arbitrary and capricious standard of review applies in this case. In fact, this is one of the issues Plaintiff seeks to explore during discovery.

Based on the submissions of the parties, it appears that a conflict of interest exists because Unum both insures the Plan and acts as the final decision-maker. [HCA Health Services](#), 240 F.3d at 1001; [Yochum v. Barnett Banks, Inc. Severance Pay Plan](#), 234 F.3d 541, 544 (11th Cir.2000). In such cases, \*701 the long standing principles of trust upon which ERISA law was based no longer mandate full deference to the administrator's discretionary decisions.

## B. Merits Of Defendant's Motion

The Eleventh Circuit has never squarely addressed the issue of the limits of discovery in ERISA cases. Courts throughout Florida have addressed this issue differently. Plaintiff relies heavily on [Rosser-Monahan v. Avon Products, Inc.](#), 227 F.R.D. 695, 698 (M.D.Fla.2004); [Lake v. Hartford Life & Accident Ins. Co.](#), 218 F.R.D. 260, 261 (M.D.Fla.2003); and [Cerrito v. Liberty Life Assur. Co.](#), 209 F.R.D. 663 (M.D.Fla.2002). In those cases, the courts permitted discovery, even though the arbitrary and capricious standard of review applied. Discovery was appropriate to permit the Court to evaluate:

1. The exact nature of the information considered by the

fiduciary making the decision;

2. Whether the fiduciary was competent to evaluate the information in the administrative record;

3. How the fiduciary reached its decision;

4. Whether given the nature of the information in the record it was incumbent upon the fiduciary to seek outside technical assistance in reaching a "full and fair review" of the claim; and

5. Whether a conflict of interest exists.

See [Cerrito](#), 209 F.R.D. at 664 (citations omitted).

The discovery sought by Plaintiff Fish is appropriately limited in scope and will assist the Court in determining whether there is a reasonable basis for Unum's decision to deny benefits. Defendant notes that when the arbitrary and capricious standard of review applies, that "the function of the court is to determine whether there was a reasonable basis for the decision, based upon the facts known to the administrator at the time the decision was made." [Jett v. Blue Cross & Blue Shield](#), 890 F.2d 1137, 1139 (11th Cir.1989). Defendant equates the Eleventh Circuit's decree limiting the court's review to the "facts known to the administrator" to be synonymous with the information contained in the administrative record. Although the administrative record certainly will contain "facts" known to the administrator, it does not, by necessity, contain all of the facts known to the administrator. This information can be obtained only through reasonably limited discovery.

Defendant maintains that this Court's review is similar to an appellate court reviewing a district court's decision. The Court declines to accept Defendant's offer to so limit its review because ERISA appeals are not ordinary administrative appeals. For example, in Social Security appeals, which involve review of the same kind of medically related administrative record as is present here, the court reviews the decision of a trained and neutral Administrative Law Judge. In an agency proceeding, the court reviews the decision of a board or other agency tribunal that has been authorized by Congress to make such decisions after appropriate administrative proceedings. None of the neutrality or hearing-type protections in those cases is present here.

Plaintiff should be permitted, within the limited scope set forth in this order, to explore whether Unum had a conflict of interest, a reasonable basis for its determination, and if other facts were known to Unum at the time it considered Plaintiff's claim. As set forth by the United States Supreme Court in [\*Motor Vehicle Mfr. Ass'n v. State Farm Mutual Auto. Ins. Co.\*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 \(1983\)](#), a decision is arbitrary and capricious if the decision-maker "entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence."

Having fully considered the issues presented, the Court finds that Defendant has not met its burden of showing good cause for a protective order as required by [\*Fed.R.Civ.P. 26\(c\)\*](#). See [\*Chicago Tribune Co. v. Bridgestone/Firestone, Inc.\*, 263 F.3d 1304, 1313 \(11th Cir.2001\)](#) ("The prerequisite [to a [\*Rule 26\(c\)\*](#) order of protection] is a showing of 'good cause' made by the party seeking protection.") The limited scope of inquiry \*702 sought by the Plaintiff is appropriate and Defendant's Motion is therefore DENIED.

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