

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

P.A., Orlando, FL, for defendant.

Delores Ann LAKE, Plaintiff,
v.
HARTFORD LIFE AND ACCIDENT INSURANCE
COMPANY, Defendant.

No. 8:03-CV-237-T-26EAJ.

Oct. 7, 2003.

On defendant's motion to limit scope of review and discovery/motion for protective order, the District Court, Lazzara, J., held that plaintiff was entitled to conduct discovery as to all facts known to the administrator at the time decision at issue was made.

Motions denied.

West Headnotes

[1] Pensions  **139**
[296k139 Most Cited Cases](#)

Plaintiff in suit against ERISA plan administrator was entitled to conduct discovery as to all facts known to the administrator at the time decision at issue was made; to the extent those "facts known" were not reflected in the papers in the claims file, nothing prohibited plaintiff from conducting discovery outside the administrative record as it pertained to relevant circumstances. Employee Retirement Income Security Act of 1974, § 2 et seq., [29 U.S.C.A. § 1001](#) et seq.

[2] Pensions  **139**
[296k139 Most Cited Cases](#)

Discovery may be permitted in an ERISA suit beyond the administrative record when it is relevant to: (1) examining whether an administrator fulfilled his or her fiduciary duties; (2) whether proper procedures were followed in compiling the record; (3) whether the record is complete; and (4) whether the administrator had a conflict of interest. Employee Retirement Income Security Act of 1974, § 2 et seq., [29 U.S.C.A. § 1001](#) et seq.

*261 John V. Tucker, Anderson & Tucker, St. Petersburg, FL, for plaintiff.

[Ralph C. Losey](#), Katz, Kutter, Alderman & Bryant,

ORDER

[LAZZARA](#), District Judge.

**1 Before the Court is Defendant's Motion to Limit Scope of Review and Discovery/Motion for Protective Order and supporting memorandum (Dkts. 13 and 14), a supporting affidavit of Hartford Life and Accident Insurance Company (Hartford) (Dkt.16), and Plaintiff's Memorandum in Opposition. (Dkt.19). After careful consideration of the arguments made and the file, the Court concludes that the motions should be denied.

[\[1\]\[2\]](#) The Eleventh Circuit has made it clear that in a situation involving a conflict of interest, an ERISA plan administrator's decision to deny benefits is subject to the heightened arbitrary-and-capricious standard of [Brown v. Blue Cross and Blue Shield of Alabama](#), 898 F.2d 1556 (11th Cir.1990), "regardless of whether the decision turns on findings of fact or on interpretations of plan terminology." See [Torres v. Pittston Co.](#), 346 F.3d 1324, 1334, 2003 WL 22233589, at *8 (11th Cir.2003). It is unnecessary at this stage of the proceedings to decide which standard of review to apply, and it seems appropriate based on the issues raised by Plaintiff that discovery may be conducted as to all "the facts as known to the administrator at the time the decision was made." See [Jett v. Blue Cross and Blue Shield of Ala., Inc.](#), 890 F.2d 1137 (11th Cir.1989); [Buckley v. Metropolitan Life](#), 115 F.3d 936, 941 (11th Cir.1997). To the extent those "facts known" are not reflected in the papers in the claims file, nothing prohibits Plaintiff from conducting discovery as it pertains to those circumstances set forth in [Cerrito v. Liberty Life Assurance Co. of Boston](#), 209 F.R.D. 663, 664 (M.D.Fla.2002). [\[FN1\]](#) See also [Woodward v. Reliance Standard Life Ins. Co.](#), No. 1:02-cv-64MMP, 2003 WL 1798519 (N.D.Fla. Mar.10, 2003). Therefore, the scope of discovery will not be wholly limited as requested by Hartford, but may include inquiry into the areas mentioned in this order in accordance with the case law cited.

[FN1](#). Discovery may be permitted beyond the administrative record when it is relevant to (1) examining whether an administrator fulfilled his or her fiduciary duties, (2) whether proper procedures were followed in compiling the record; (3) whether the record is complete; and (4) whether the

administrator had a conflict of interest.

The Court further finds that Hartford has failed to show "good cause" as required by [Federal Rule of Civil Procedure 26\(c\)](#) to grant a protective order. Plaintiff has complied with [Rule 26\(b\)\(1\)](#) in crafting the deposition notices and in articulating grounds supporting same in her memorandum in opposition.

It is therefore **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Limit Scope of Review and Discovery (Dkt.13) is **DENIED**.
2. Defendant's Motion for Protective Order (Dkt.13) is **DENIED**.
3. The parties shall coordinate forthwith the scheduling of the noticed depositions.

218 F.R.D. 260, 2003 WL 22300531 (M.D.Fla.)

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