

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CLAIRE HOWELL,

Plaintiff,

v.

CIGNA CORPORATION,  
CONNECTICUT GENERAL LIFE  
INSURANCE COMPANY, and  
ALLEGIS GROUP, INC.,

Defendants.

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ORDER

04-C-0210-C

This is a civil suit arising under the Employee Income Retirement Security Act, or ERISA, 29 U.S.C. §§ 1001-1461. Plaintiff Claire Howell contends that defendants CIGNA and Connecticut General Life Insurance Company violated their fiduciary duties under the act when they denied her request for pre-authorization of facial surgery. (In her original complaint, she included two state law claims which she abandoned later. The case is before the court on two motions: (1) that of defendants CIGNA and Connecticut General to dismiss the complaint against them on the grounds that neither defendant is a proper party to the lawsuit and that CIGNA is not subject to personal jurisdiction in this state and (2)

plaintiff's motion for leave to amend her complaint.

In support of their motion to dismiss, defendants assert that they are not plan administrators and therefore, cannot be sued. Defendant CIGNA has filed a declaration in which it avers that it is not a party to any contract or health insurance policy with plaintiff.

Defendants argue that the only proper defendant in an action to recover benefits due under an ERISA plan is the employee benefit plan itself. Plaintiff alleged in her complaint that CIGNA and Connecticut General administered or underwrote the plan under which she was allegedly covered at the time she sought pre-authorization for her surgery. If either or both of these entities qualifies as a fiduciary under ERISA, then it is their decisions that are subject to review. See, e.g., Hightshue v. AIG Life Insurance Co., 135 F.3d 1144, 1147 (7th Cir. 1998) (if employer's ERISA plan gives discretion to its administrator to pay or deny claims, court reviews administrator's decisions); Schmidt v. Sheet Metal Workers' National Pension Fund, 128 F.3d 541, 547 (7th Cir. 1997) ("It goes without saying that a claim for breach of fiduciary duty lies only against an individual or entity that qualifies as an ERISA 'fiduciary.'"); Klosterman v. Western Genral Managment, Inc., 32 F.3d 1119 (7th Cir. 1994) (claims administrator could not be sued for denial of benefits where administrator processed claims "in accordance with the claims procedures and standards established by" the employer; absence of showing that company had discretionary authority over management of plan or its administration established that it was not fiduciary under §§

1105(a) and 1109(a)). Jass v. Prudential Health Care Plan, Inc., 88 F.3d 1482, 1490-91 (7th Cir. 1996), is not to the contrary. In Jass, the question was whether claims against a utilization review provider were preempted; the court held that the claimant could not sue an individual utilization review administrator but only the plan, which was the entity that denied the benefits. The court did not have to determine what entity had made the benefit denial decision because the issue was not in dispute.

It is much less clear in this case what the relationship was between the defendants and the COBRA plan under which plaintiff was seeking benefits. Defendants CIGNA and Connecticut General suggest that the plan was Allegis Group's, plaintiff's former employer, but they offer no evidence that it was. They merely assert that they had no administration authority over the plan. Plaintiff has alleged in her complaint, however, that the COBRA Benefits Guide for 2002 that Allegis provided her stated that plaintiff could "enroll in the CIGNA HealthCare Plan of [her] choice" and that she did so. She alleged also that the letter denying her request for pre-authorization indicated that it was the Charlotte Claim Office of Connecticut General that was denying the claim but the letter was on CIGNA letterhead.

It would be premature to make a decision on defendants' motion to dismiss without having more evidence about the relationship of the defendants to each other and to the COBRA plan at issue. Therefore, I will reserve a ruling on the motion to dismiss and schedule the matter for an evidentiary hearing at which the parties can flesh out the

representations in their briefs. At the hearing, the burden will be on plaintiff to establish that defendants CIGNA or Connecticut General or both are plan administrators, subject to suit, and, if relevant, that this court could exercise personal jurisdiction over CIGNA. In addition, I will reserve a ruling on plaintiff's motion to amend her complaint until after the hearing because the outcome of the hearing will have a bearing on the need for amendment.

If, before the evidentiary hearing, counsel can resolve the issue of the proper defendant in this case and so advise the court, the hearing will be cancelled. Presumably, if defendants' counsel can demonstrate to plaintiff's counsel that defendants CIGNA and Connecticut General have no connection to Allegis's plan even as claims administrators *and* that they have no discretion to pay or deny claims, plaintiff will drop her claims against them.

#### ORDER

IT IS ORDERED that a ruling is reserved on the motion of defendants CIGNA Corporation and Connecticut General Life Insurance Company to dismiss the complaint against them and on plaintiff Claire Howell's motion to amend her complaint. An evidentiary hearing will be held at 9:00 am on Friday, September 3, 2004, in the United States Courthouse, 120 N. Henry St., Madison WI 53703, Courtroom 250. I expect the

parties to accommodate their opponents' need for expedited discovery on the issues to be heard.

Entered this 4th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge