Jackson, Sr. v. The Guardian Life Insurance Company of America, et al

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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

CHARLES JACKSON, SR.,

Plaintiff, v. THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, et al.,

Defendants.

Case No. 22-cv-03142-JSC

ORDER RE: MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 27

Charles Jackson, Sr. brings this lawsuit against The Guardian Life Insurance Company of America and his employer, Pacific States Petroleum under the Employee Retirement Income 29 U.S.C. §§ 1132(a)(1)(B), (a)(3)(B). Defendants move for summary judgment based on Plaintiff failure in their view to exhaust administrative remedies under prior to filing suit. (Dkt. No. 27.) 1

conducting oral arguments on April 13, . If a plan requires pre-suit exhaustion, a plaintiff must without exception. Wit v. United Behavioral Health, 58 F.4th 1080, 1098 (9th Cir. 2023). Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc., 770 F.3d 1282, 1299 (9th Cir. 2014). Here, the Pacific States plan does not require exhaustion of administrative remedies. (Dkt. No. 27-1 at 522-524); see also Vaught v. Scottsdale Healthcare Corp. Health Plan, 546 F.3d 620, 628 (9th Cir. 2008) (courts So, Plaintiff had no obligation to do so. Spinedex, 770 F.3d at 1299.

1 ECF-generated page numbers at the top of the documents.

DISCUSSION Plaintiff began working as a tanker truck driver for Pacific States Petroleum in 2012. Guardian administers ployee benefit plan. In January 2020, Plaintiff submitted a -term disability plan. (Dkt. No. 29-5 at 4.) Around the same time, he began experiencing elbow and shoulder pain. (Dkt. No. 29-4 ¶ 7.) He transitioned to modified office duties to avoid further injury. (Id.) A few months later, Plaintiff submitted a second coverage form, electing both short and long-term disability coverage. (Dkt. No. 29-6 at 5.) Pacific States then sent Plaintiff the following notice: (Dkt. No. 29-7 at 2.) Pacific States sent Plaintiff identical notices again stating Plaintiff had Long-Term Disability Coverage and $34.08 in premiums would be deducted per paycheck in both December 2021 and October 2022. (Id. at 3, 5.) Shortly after the first notice from Pacific States, Plaintiff took paid

short-term disability leave. (Dkt. No. 29 ¶ 12.) Once cleared to return to work, he did so. (Id. ¶ 13.) But, in January 2021, Plaintiff obtained elbow surgery and again went on short-term leave. (Id.) Because his short-term leave was set to expire in April 2021, Plaintiff inquired about the process to obtain his long-term disability benefits. (Id. ¶ 14.) In response, Guardian told Plaintiff he had not applied for long-term Id.) Plaintiff believed he had been accepted for coverage and had been paying for long-term coverage since May 2020. (Id.) Plaintiff submitted another form, again selecting long-term coverage. (Dkt. No. 29-8 at 5.) He also provided an evidence of insurability form, (id. at 7), and confirmed coverage premiums had been deducted from his paycheck, (Dkt. No. 29-9 at 2.) Guardian declined to provide coverage based on Plainti (Dkt. No. 27-1 at 638, 642.) he wrote he had no health issues when he started paying for long-term coverage in 2020. (Dkt. No. 29-11 at 3.) Guardian declined to waive the requirement. (Id.) In December 2021, after receiving another notice from Pacific States that he had long-term disability coverage, (Dkt. No. 29-1 ¶ 2.) A few months later, Guardian sent a letter was set up to review for Long Term Disability benefits. According to our records, you are not insured for Group Long Term Disability coverage with Guardian as your application was denied . No. 27- Id. at 645-

651.) Plaintiff then sued for wrongful claim denial, or in the alternative, for breach of fiduciary duty. (Dkt. No. 1.)

DISCUSSION Defendants move for summary judgment on one ground: failure to exhaust administrative remedies under the plan prior to filing suit. But, even if the Court assumes Plaintiff failed to exhaust administrative remedies under the plan, 2

Because the plan does not require administrative remedies exhaustion exhaust does not doom his claim. Spinedex, 770 F.3d at 1299. I. Exhaustion Bilyeu v. Morgan

Stanley Long Term Disability Plan, 683 F.3d 1083, 1088 (9th Cir. 2012) (quoting Vaught v. Scottsdale Healthcare Corp. Health Plan, 546 F.3d 620, 626 (9th Cir. 2008)). mandates an opportunity for administrative review, see 29 U.S.C. § 1133(2), and [the Ninth

Circuit has] treated completion of this administrative review as a prudential exhaustion Wit v. United Behav. Health, 58 F.4th 1080, 1097 98 (9th Cir. 2023) (citing Castillo v. Metro. Life Ins. Co., 970 F.3d 1224, 1228 (9th Cir. 2020)). But, under binding precedent, ERISA exhaustion is ultimately a question of contract. If a plan makes exhaustion optional, exhaustion is optional. Spinedex, 770 F.3d at 1299. If a plan makes exhaustion mandatory, exhaustion is mandatory. Wit, 58 F.4th at 1098. No judge-made exceptions excuse non-compliance. Id. A. Prudential Exhaustion 1. Amato v. Bernard The Ninth Circuit first announced the exhaustion doctrine in Amato v. Bernard, 618 F.2d 559, 566 (9th Cir. 1980). Amato rests largely on legislative history.

2 The parties dispute, to some extent, whether Plaintiff did attempt to exhaust his administrative remedies. (Dkt. No. 29 at 12 n.2; Dkt. No. 30 at 8.) Plaintiff describes the entire saga listed above e

further efforts would be futile. (Dkt. No. 29 at 12 n.2.) s with Guardian and Pacific States in April and May 2020 30 at 8.) Defendants argue Guardian denied a claim only once, in February 2022. (Id. at 9.) As For example, linked ERISA to the Labor Management Relations Act. Id. at 567. Because the LMRA requires administrative exhaustion, the Court found the legislative

Id. But the Amato court also made arguments from ERISA itself. While ERISA does not require exhaustion, it does require plans to offer administrative remedies and empowers the Secretary of Labor to regulate administrative review. Id. would certainly be anomalous if the same good reasons that presumably led Congress and the Secretary to require covered plans to provide administrative remedies for aggrieved claimants did not lead the courts to see that those remedies are regularly used Id. at 567. Finally, the Court recognized a practical benefit of exhaustion

controversy. Id. at 568. So based on the legislative history, the text, and the policies underlying the text exhaustion requirement in suits under ERISA, and that as a matter of sound policy they should Id. at 568. 2. The Exceptions From its inception, however, prudential exhaustion was a matter of discretion not a bright-line rule. Indeed, Amato announced both the exhaustion requirement and its exceptions. Futility, inadequate remedies, and unreasonable claims procedures each excuse exhaustion. Amato, 618 F.2d at 568; Vaught, 546 F.3d at 626 27. Futility applies only where administrative Diaz v. United Agr. Emp. Welfare Ben. Plan & Tr., 50 F.3d 1478, 1485 (9th Cir. 1995). nadequate remed describes situations where internal review procedures are inadequate to provide a meaningful remedy or unbiased process. Amato, 618 F.2d at 568; Diaz exception stems from E ions, which state claims procedures. Id. Vaught, 546 F.3d at 627 (quoting 29 C.F.R. § 2560.503 1(l)).

Given these exceptions, exhaustion is not jurisdictional. Vaught, 546 F.3d at 626 n.2. abuse of discretion if it does not[. Amato, 618 F.2d 568. B. Contractual Exhaustion Two precedential decisions limit the applicability of judge-made . Under Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc., 770 F.3d 1282, 1299 (9th Cir. 2014) and Wit v. United Behavioral Health, 58 F.4th 1080, 1098 (9th Cir. 2023), the plan terms control exhaustion. 1. Spinedex Physical Therapy USA v. United Healthcare of Arizona In Spinedex Physical Therapy USA v. United Healthcare of Arizona, the plaintiffs argued the ERISA plans did not expressly require exhaustion and so their claims should not be barred for failure to exhaust. 770 F.3d at 1298. The court agreed:

A number of our sister circuits have held that a claimant need not exhaust when the plan does not require it. [citations omitted]. 3

We arguably adopted the same rule in Nelson v. EG & G Energy Measurements Group, Inc., 37 F.3d 1384 (9th Cir. 1994), and we do so explicitly today. In Nelson, we rejected a defendant s contention the Administrative Committee prior to seeking relief from the

instituting Id. at 1388. Spinedex, 770 F.3d at 1298-99 (emphasis added) (cleaned up). So, under binding Ninth Circuit a claimant need not exhaust when the plan does not require it Id. at 1299. Spinedex to

when an ERISA plaintiff subjectively believes exhaustion is optional is unpersuasive. Spinedex claimants to believe exhaustion is not a prerequisite to filing suit:

ERISA seeks to avoid saddling plaintiffs . . . with the burdens and procedural delays imposed by inartfully drafted plan terms. Where plan documents could be fairly read as suggesting that exhaustion is not a mandatory prerequisite to bringing suit, claimants may be affirmatively misled by language that appears to make the exhaustion

3 Spinedex quotes two out-of-circuit opinions during this portion of the opinion: Kirkendall v. Halliburton, Inc., 707 F.3d 173 (2d Cir. 2013) and Watts v. BellSouth Telecomms., Inc., 316 F.3d 1203 (11th Cir. 2003). These cases describe the relevant test in subjective terms i.e., the Id. But, as discussed in detail below, Spinedex eed not exhaust when the plan does not require it Spinedex, 770 F.3d at 1298 (emphasis added).

requirement permissive when in fact it is mandatory as a matter of law. [E]xempting from the general exhaustion requirement those plan parti impose an exhaustion requirement will have the salutary effect of encouraging employers and plan administrators to clarify their plan terms and, thereby, of leading more employees to pursue their benefits claims through their plan 770 F.3d at 1298-99 (cleaned up). But the court did not hold that only those plaintiffs affirmatively misled are not re Spinedex, 770 F.3d at 1298. Consistent with that holding, the Ninth Circuit remanded the case to the district court to determine whether:

(1) the plan required exhaustion of administrative remedies; (2) the the claims procedures; and (3) the claim was in fact exhausted. Id. at 1299. It did not remand to determine whether the plaintiffs subjectively believed they were not required to exhaust. Indeed, such an inquiry would do what ERISA seeks to avoid: saddle Id. at 1298 (quoting Kirkendall v. Halliburton, Inc., 707 F.3d 173, 181 (2d Cir. 2013)). Does the court hold a trial to determine if the plaintiff was actually misled? Is the plaintiff barred from claiming he was misled merely because he was represented by counsel, as Defendants claim here? Do Defendants conduct discovery on the question? , rather than these subjective questions, better serves the and plan administrators to clarify their plan terms and, thereby, of leading more employees to See Watts, 316 F.3d at 1209 10. Other district courts considering Spinedex have reached the same conclusion. See, e.g., Greiff v. Life Ins. Co. of N. Am., 386 F. Supp. 3d 1111 (D. Ariz. 2019) (describing test in objective terms); In re Out-of-Network Substance Use Disorder Claims Against UnitedHealthcare, No. 19- cv-2075-JVS, 2023 WL 2808747, at *22 (C.D. Cal. Jan. 13, 2023) (same); Adan v. Kaiser Found. Health Plan, Inc., No. 17-CV-01076-HSG, 2018 WL 1174559, at *5 (N.D. Cal. Mar. 6, 2018) (same); but see Women s Recovery Ctr., LLC v. Anthem Blue Cross Life & Health Ins. Co., No. 20-cv-102-JWH, 2022 WL 757315, at *4 (C.D. Cal. Feb. 2, 2022) (quoting a subjective portion of Spinedex without deciding the exhaustion question). 2. Wit v. United Behavioral Health The Ninth Circuit recently confirmed whether exhaustion is required. See Wit v. United Behavioral Health, 58 F.4th 1080 (9th Cir. 2023). Wit is largely a mirror image of Spindex. In Wit, the relevant plan stated: against us to recover reimbursement until you have completed all the steps [described in

the Id. at 1091. After the district court excused exhaustion on futility grounds, the Ninth Circuit reversed that decision. Id. at 1091. The court first declared:

is [not] so complex that administrative costs, or litigation expenses, unduly discourage

. . light of reason and experience, a body of federal common law cannot alter or override clear and unambiguous plan terms. Id. at 1098 (cleaned up). Accordingly, the court held:

[w]hen an ERISA plan does not merely provide for administrative review but, as here, explicitly mandates exhaustion of such procedures before bringing suit in federal court and, importantly, provides no exceptions, application of judicially created exhaustion exceptions would conflict with the written terms of the plan. Id. at 1098. Thus, Wit Id. This holding is consistent with Spinedex command a claimant need not exhaust when the plan does not require it Spinedex, 770 F.3d at 1299.

* * * In sum, a claimant need not exhaust when the plan does not require it Id. But if a plan makes exhaustion mandatory, exhaustion is mandatory. 4

Wit, 58 F.4th at 1098.

4 As Defendants noted at oral argument, Wit discusses prudential exhaustion (and its exceptions) as good law before holding a claimant must exhaust if the plan requires it. Id. at 1097-98. But Wit does not cite Spinedex holding as to the inverse proposition: claimant need not exhaust when the plan does not require it Spinedex, 770 F.3d at 1299. it seems C. Application The Court interprets experience. Vaught, 546 F.3d at 628. The plain language of be read as making exhaustion optional prior to an ERISA suit. The plan states: Appeal of Adverse Benefit Determinations: If a claim is wholly or partially denied, the claimant will have up to 180 days to make an appeal. (Dkt. No. 27-1 at 522.) During an appeal, the plan requires Guardian provide and receive a review based on that record. (Id.) And, if Guardian denies an appeal, the plan requires Guardian provide the claimant: civil suit under Section 502(a) of the Employee Retirement Income Security Act of 1974

including such an action Id. at 523.) This language does not require exhaustion. The Wit plan required exhaustion prior to filing a suit in court. Wit, 58 F.4th at 1091. This plan, in contrast, requires an appeal be filed within 180 days. (Id. at 522.) But it does not require an appeal. (Id.) The language that a claimant waives her right to an administrative appeal of a claim denial if she does not file a written request for appeal within the specified timeframe. However, nothing in this language would alert a reasonable claimant that waiving the claimant s right to an administrative appeal will preclude the claimant from bringing a civil action under Section 502(a) of ERISA. Greiff v. Life Ins. Co. of N. Am., 386 F. Supp. 3d 1111, 1114 15 (D. Ariz. 2019). Telling a claimant about a

exhaustion is either reasonably read as mandatory or optional, it is not clear how a court could ever reach the prudential exhaustion requirement (or the exceptions thereupon). In other words, it seems

either: (1) a plan makes exhaustion optional and Spinedex means exhaustion is optional; or (2) a plan makes exhaustion mandatory and Wit means exhaustion is mandatory. Thus, applying Spinedex and Wit faithfully, as this Court must, contractual interpretation may have displaced prudential exhaustion and its exceptions. Defendants object this displacement is contrary to Wit . The Court disagrees. Wit did not overrule Spinedex. Rather, the Wit court had no reason to consider the non-mandatory counterfactual because the plan there made exhaustion mandatory. Wit, 58 F.4th at 1091. Spinedex and Wit are binding precedents with consistent instructions to examine and follow the plan language regarding exhaustion. The Court merely applies each case to the facts here. right to an appeal is not the same as telling a claimant she must appeal or she loses her right to Laura B. v. United Health Grp. Co., No. 16-cv-01639-JSC, 2017 WL 3670782, at *6 (N.D. Cal. Aug. 25, 2017); see also Gallegos v. Mount Sinai Med. Ctr., 210 F.3d 803, 810 (7th Cir. 2000) (discussing the absence of penalty language in plan documents as implying voluntary exhaustion).

tells claimants the appeal process resolution option. (Dkt. No. 27-1 at 524.) Immediately after discussing the appeal process, the plan states:

Alternative Dispute Options: The claimant and the plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact the local U.S Department of Labor Office and the State insurance regulatory agency. In addition to any legal rights you may have under section 502(a), if you believe that we have violated ERISAs procedural requirements, you may request that we review any claimed violation(s) and we will respond to you within ten days. (Id. (emphasis added).) s in addition to that just described above; in other words, the appeal is a voluntary alternative dispute resolution option and mediation is another such option. Similarly, the phrase [i]n addition to any legal rights you may have under section 502(a) suggests ERISA rights exist outside this appeal process. (Id.); see also Barnes v. Indep. Auto. Dealers Ass'n of Cal. Health & Welfare Benefit Plan, 64 F.3d 1389, 1393 (9th Cir. 1995) (requiring courts construe ambiguities in an ERISA plan against the drafter and in favor of the Thus, a reasonable reader not only could, but would understand an ERISA suit as an

unpersuasive. First, Defendants note that after

Security Act o Id. at 523 [T]he language indicates that a claimant has a right to bring a civil

action under ERISA § 502(a) if an administrative appeal is denied, but it does not specify that a claimant does not have a right to bring a civil action under any other circumstances. Greiff, 386 F. Supp. 3d at 1114; see, e.g., Wit, 58 F.4th at 1091 (to)

section. (Dkt. No. 27 at 15-16.) But such inferences from ambiguity must be drawn against drafting parties, not in their favor. Barnes, 64 F.3d at 1393.

Finally, to the extent Defendants rely on the February 2022 denial letter to establish mandatory

exhaustion, that argument also fails. (See Dkt. No. 27-1 at 646.) Spinedex requires the Spinedex, 770 F.3d at 1299. Defendants give no explanation as to how a letter issued after a claim denial can modify the agreement in the ERISA plan. (See id. Application of the Participating Employer, a copy of which is attached hereto or endorsed hereon

157 (same).) Moreover, consideration of non-plan documents like the denial letter would re-open the subjective inquiry Spinedex seeks to avoid. For example, declare they never received the denial letter. (Dkt. Nos. 29-1; 29-2; 29-3.) Does that matter? Must a court conduct a trial to determine if that representation is true? Such an inquiry would be contrary to the Supreme at focus on the written terms of the plan is the linchpin of a system that is not so complex that administrative costs, or litigation expenses, unduly discourage employers from offering ERISA plans in the first place. Wit, 58 F.4th at 1098 (quoting Heimeshoff v. Hartford Life & Acc. Ins. Co., 571 U.S. 99, 108 (2013) (cleaned up)). Put differently, if courts mandated exhaustion under these circumstances, it would undermine the very benefits exhaustion purports to promote. In sum, the Pacific States plan does not require exhaustion. claimant need not exhaust when the plan does not require it Spinedex, 770 F.3d at 1299. So, summary judgment fails because pre-suit exhaustion was optional under the Pacific States plan.

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CONCLUSION For the reasons stated above deadlines in the stipulated schedule at Dkt. No. 33 remain in place.

IT IS SO ORDERED. This Order disposes of Dkt. No. 27. Dated: April 13, 2023

JACQUELINE SCOTT CORLEY United States District Judge