

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

JENNY EBERLE,)
)
Plaintiff,)
)
vs.) NO. 4:05-CV-30
)
THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA,)
)
Defendant.)

ORDER

This matter is before the Court on "Defendant The Prudential Insurance Company of America's Motion for Protective Order Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure," filed on July 14, 2005. For the reasons set forth below, the motion is **DENIED**.

BACKGROUND

Plaintiff, Jenny Eberle, filed this action seeking payment of her long term disability benefits under a policy insured by Defendant, The Prudential Insurance Company of America (hereinafter "Prudential"). (Compl. ¶ 4.) Plaintiff's employer was Purdue University. (Compl. ¶¶ 5, 6.) Eberle filed this action seeking damages for Prudential's breach of contract by failing to pay benefits and breach of the covenant of good faith and fair dealing. (Compl. ¶¶ 22, 24.)

DISCUSSION

In response to Plaintiff's requests for production of documents, Prudential produced to Plaintiff the administrative record developed in connection with Plaintiff's claim for long term disability benefits. On July 7, 2005, Plaintiff served counsel for Prudential with a notice of deposition for 8 Prudential employees and representatives, and a Rule 30(b)(6) notice of deposition.¹ Prudential filed the instant motion, requesting a protective order from additional discovery outside of the administrative record. Prudential argues that the Court should only consider evidence that was before Prudential when it terminated Plaintiff's benefits absent a showing and finding of good cause to allow additional discovery. Essentially, Prudential contends that even though this case does not fall under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* ("ERISA"), the limited discovery permitted in equivalent ERISA cases also limits the discovery available in this case. Plaintiff disagrees, arguing that a case which is specifically exempted from ERISA may not be subjected to ERISA's boundaries. Moreover, Plaintiff argues that Prudential has failed to put forth any relevant case law which subjects Plaintiff's breach of contract and bad faith action to discovery limitations.

¹ In the alternative to this motion for a protective order, and as an offer of compromise, Prudential requests that the Court allow it to identify and offer only one representative for deposition. This position is also rejected by the Court.

Both parties agree that Eberle's claims are not governed by ERISA because she is a governmental employee, and these claims are specifically exempted from ERISA. See 29 U.S.C. §§ 1002(32), 1003(b)(1). However, Prudential points out the similarity between the nature of this case and an action pursuing benefits under an employee welfare benefit governed by ERISA. Prudential therefore argues that the underlying principles of trust law (largely codified in ERISA), should govern these discovery matters (even though ERISA does not apply to this case), and discovery should be limited to review of the administrative record. See *Casey v. Uddeholm Corp.*, 32 F.3d 1094, 1099 (7th Cir. 1994) (allowing the consideration of evidence outside the administrative record in only limited circumstances in an ERISA case). Prudential further supports its motion by arguing that the administrative record is well developed in this case, and that limiting the scope of review to the administrative record is supported by basic principles of fairness and economy.

In response, Plaintiff correctly points out that Prudential has not cited to any Indiana cases which subject Plaintiff's breach of contract and bad faith action to ERISA's discovery limitations. Moreover, a state of Indiana case recently rejected an almost identical motion for a protective order, also filed by Prudential. See *Allens v. Prudential*, Superior Court of Tippecanoe County, No. 790001-0502-PL-00005, slip op. (July 27, 2005).

This Court agrees with Plaintiff that Prudential has failed to

produce any relevant case law or authority showing why, in a non-ERISA case, the discovery should be limited to the administrative record. The Federal Rules of Civil Procedure provide for broad discovery, "regarding any matter, not privileged, that is relevant to the claim or defense of any party . . ." Fed. R. Civ. P. 26(b)(1). As the Court in *Fitts v. Fed. Nat'l Mortgage Assoc.*, 204 F.R.D. 1, 4 (D.D.C. 2001), aptly stated, "[t]he scope of discovery in ERISA cases permitted is simply not the same as the discovery permitted by Fed. R. Civ. P. 26(c)." The Court sees no reason why Plaintiff's entitlement to discovery in this admittedly non-ERISA case should be limited.

Although Prudential claims that *Krochmal v. Paul Revere Life Ins. Co.*, 684 N.W.2d 375 (Mich. Ct. App. 2004), and *Guiles v. Univ. of Michigan Bd. of Regents*, 483 N.W.2d 637 (Mich. Ct. App. 1992), support its theory that ERISA principles are applicable to non-ERISA group policies and cases involving court's review of an administrative record, Prudential's reliance is misplaced. Both opinions by the Michigan trial courts deal with the standard of review in a non-ERISA case, but they do not analyze, much less even discuss, the proper scope of discovery. Finally, because discovery is not limited in this case, this Court also rejects Prudential's request to bifurcate Plaintiff's bad faith claim from the breach of contract count.

In conclusion, Rule 26 allows Plaintiff to request and obtain all information relevant to her claims for breach of contract and breach

of the covenant of good faith and fair dealing. Because Plaintiff's claim is exempt from ERISA, it is therefore not subject to ERISA's discovery limitations.

CONCLUSION

For the reasons set forth above, Prudential's Motion for Protective Order Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure is **DENIED**.

DATED: October 3, 2005

**/s/RUDY LOZANO, Judge
United States District Court**