UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

SEAN AKINS, *Plaintiff*, v. THE STANDARD INSURANCE COMPANY, *Defendant*.	)	Case No. 1:16-cv-125 Judge Travis R. McDonough Magistrate Judge Susan K. Lee

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MEMORANDUM & ORDER

Before the Court is Defendant's Motion to Dismiss Count II of Plaintiff's Complaint. (Doc. 10.) Plaintiff responded (Doc. 17), and Defendant replied (Doc. 18). For the following reasons, the Court will **GRANT** the motion. (Doc. 10.)

I. BACKGROUND

Plaintiff, a registered nurse, obtained a long-term disability insurance policy ("the Policy") through Defendant while working for the University of Alabama Birmingham Hospital. (Doc. 1-2, at 3.) In 2009, he applied for and received benefits under the policy after he suffered injuries in an automobile accident. (*Id*. at 4.) At the time he applied for benefits, he was covered by a provision of the Policy which defined disability with regard to whether Plaintiff was able to perform his "own occupation." (*Id*.) In August 2014, under the terms of the policy, the definition shifted to an "any occupation" definition of disability, and Defendant terminated Plaintiff's benefits effective October 29, 2014. (*Id*.) Plaintiff retained counsel and appealed his denial by letter on October 3, 2014. (*Id*.) On November 3, 2014, Defendant denied the claim by

letter. (*Id*. at 5.) On May 3, 2015, Plaintiff filed an administrative appeal of his claim (*id*.), which was denied by Defendant on July 31, 2015 (*id*. at 7).

Plaintiff filed suit on April 11, 2016. (*Id*. at 2.) Defendant filed this motion to dismiss, arguing that Plaintiff's bad faith claim is barred by the applicable one-year statute of limitations. (Doc. 10.)

II. STANDARD

According to Rule 8 of the Federal Rules of Civil Procedure, a plaintiff's complaint must contain "a short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1). Though the statement need not contain detailed factual allegations, it must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.*

A defendant may obtain dismissal of a claim that fails to satisfy Rule 8 by filing a motion pursuant to Rule 12(b)(6). On a Rule 12(b)(6) motion, the Court considers not whether the plaintiff will ultimately prevail, but whether the facts permit the court to infer "more than the mere possibility of misconduct." *Id*. at 679. For purposes of this determination, the Court construes the complaint in the light most favorable to the plaintiff and assumes the veracity of all well-pleaded factual allegations in the complaint. *Thurman v. Pfizer, Inc.*, 484 F.3d 855, 859 (6th Cir. 2007). This assumption of veracity, however, does not extend to bare assertions of legal conclusions, *Iqbal*, 556 U.S. at 679, nor is the Court "bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

After sorting the factual allegations from the legal conclusions, the Court next considers whether the factual allegations, if true, would support a claim entitling the plaintiff to relief.

Thurman, 484 F.3d at 859. This factual matter must "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

"Although a motion under Rule 12(b)(6), which considers only the allegations in the complaint, is generally not an appropriate vehicle for dismissing a claim based upon the statute of limitations, if the allegations in the complaint affirmatively show that the claim is time-barred, dismissing the claim under Rule 12(b)(6) is appropriate." *Cheatom v. Quicken Loans*, 587 F. App'x 276, 279 (6th Cir. 2014).

III. ANALYSIS

Tennessee imposes a statutory penalty on insurers who in bad faith refuse to pay a claim within 60 days after a demand for payment has been made. Tenn. Code Ann. § 56-7-105. The statue does not give rise to a separate tort; rather, it allows insureds to recover "a sum not exceeding twenty-five percent (25%) on the liability for the loss . . . ." *Id.* To recover this penalty, "an insured must establish that (1) the policy was due and payable; (2) a formal demand for payment was made; (3) the insured waited 60 days after making his demand before filing suit, unless the insurer refused to pay prior to the expiration of the 60 days; and (4) the refusal to pay was not in good faith." *Heil Co. v. Evanston Ins. Co.*, 690 F.3d 722, 730 (6th Cir. 2012). The parties do not dispute that statutory bad faith claims are subject to the one-year statute of limitations set forth in Tenn. Code Ann. § 28-3-104(a)(4), which requires "actions for statutory

penalties" to be "commenced within one year after the cause of action accrued." *Montesi v. Nationwide Mut. Ins. Co.*, 970 F. Supp. 2d 784, 791 (W.D. Tenn. 2013).

The question before the Court is when Plaintiff's claim accrued. Defendants contend that Plaintiff's claim accrued on November 3, 2014, when Defendant informed Plaintiff that his benefits were being terminated. Plaintiff argues that his bad faith claim did not accrue until July 31, 2015, when Defendant denied his administrative appeal.

Tennessee law is clear that a bad faith claim accrues immediately after the insurer refuses a formal demand that it pay the claim. *Montesi*, 970 F. Supp. 2d at 791 ("[T]he right to commence the suit accrues immediately upon the refusal . . . ." (quoting *Thompson v. Interstate Life & Accident Co.*, 162 S.W. 39 (1913))). In *Fortune v. Unum Life Insurance Co.*, the Tennessee Court of Appeals was faced with a similar dispute. 360 S.W.3d 390 (Tenn. Ct. App. 2010). Unum initially denied Fortune's claim under a long term disability insurance policy in October 2001. *Id*. at 392. In 2005, Unum entered into a settlement agreement with state regulators which required Unum to reassess a certain class of claims, including Fortune's. *Id*. Following this reassessment, Unum again denied Fortune's claim; this time, however, Fortune filed suit against Unum and argued that his cause of action was timely because it did not accrue until the denial of the reassessment. *Id*. at 393. The trial court entered summary judgment in favor of Unum holding that the claims accrued upon the initial denial rather than the reassessment, and the Court of Appeals affirmed this judgment. *Id*.

Plaintiff attempts to distinguish *Fortune* on two grounds. First, he points out that—rather than an ad hoc reassessment based on factors outside the parties' agreement—his appeal was based on administrative procedures expressly created by the policy much like a standard ERISA-governed policy. He argues that requiring the insured to file suit before pursuing the agreed

upon appeals process would discourage voluntary resolution. However, it is undisputed that, unlike ERISA claims, Plaintiff's claims are not subject to an exhaustion of administrative remedies requirement, and Defendant could not have defended against those claims on such a basis had Plaintiff filed suit before the appeals process had concluded. "If limitations periods were to toll merely because further negotiation, inspections, and adjustments occur . . . it would defeat the purpose of the limitations period. Lengthening the period for suit in such a way would only serve to discourage the insurer from trying to work with the insured . . . ." *Murphy v. Allstate Indem. Co.*, No. 1:13-CV-108, 2014 WL 1024165, at *3 (E.D. Tenn. Mar. 17, 2014).

In *Holt v. Standard Insurance Co.*, the court faced a virtually identical problem to the instant case. No. 2:14-CV-253, 2015 WL 1566127 (E.D. Tenn. Apr. 8, 2015). The defendant had notified the plaintiff that his disability benefits were to be suspended on May 1, 2012. *Id*. at *1. The plaintiff pursued an administrative appeal, and the defendant denied his final appeal in September 2013. *Id*. On August 18, 2014, the plaintiff filed suit, and the defendant moved to dismiss based on the statute of limitations. *Id*. at 2. The court rejected the plaintiff's arguments that the administrative appeals delayed accrual, but ultimately determined that there were disputes as to whether the May 2012 suspension constituted a denial that prevented granting a motion to dismiss. *Id*. at 3–4.

As Tennessee courts have repeatedly emphasized the bad faith statute is "penal in nature and must be strictly construed." *Stooksbury v. Am. Nat. Property and Cas. Co.*, 126 S.W.3d 505, 519 (Tenn. Ct. App. 2003); *Walker v. Tennessee Farmers Mut. Ins. Co.*, 568 S.W.2d 103, 106 (Tenn. Ct. App. 1977); *see also Palmer v. Nationwide Mut. Fire Ins. Co.*, 723 S.W.2d 124, 126 (Tenn. Ct. App. 1986). Here, Tennessee law is clear that a bad faith claim accrues on the denial of the insured's demand for payment. Though Plaintiff attempts to distinguish the cases cited by

Defendant, he is able to cite no precedent for the affirmative proposition that his claim did not accrue until the denial of his administrative appeal. Unlike in *Holt*, there is no dispute as to whether Defendant's initial denial was actually a denial. Because the claim accrued on the initial denial, the claim is barred by the statute of limitations. Accordingly, the Court will **GRANT** Defendant's motion to dismiss.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's motion to dismiss Count II of Plaintiff's Complaint.

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE