IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DUDA, MD, NORTHWEST ORTHOPAEDIC SPECIALISTS, LLC, and DR. DONALD LEATHERWOOD,	)	**Case 2:12-cv-01082-GP**
Plaintiffs	)	**Judge Gene E. K. Pratter**
vs.	)	
STANDARD INSURANCE COMPANY, LINCOLN NATIONAL LIFE INSURANCE COMPANY, LINCOLN NATIONAL CORPORATION d/b/a LINCOLN FINANCIAL GROUP, and DISABILITY INSURANCE SPECIALISTS, LLC,	)	
Defendants	)	

STANDARD INSURANCE COMPANY'S
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS
COUNT II OF PLAINTIFFS' AMENDED COMPLAINT

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INTRODUCTION

Plaintiff John Duda, M.D. ("Duda"), filed this action to obtain payment of disability benefits under a Group Long Term Disability Insurance Policy ("Group Policy") issued to Northwest Orthopaedic Specialists ("Northwest") by Standard Insurance Company ("Standard"). The Group Policy is an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.* ("ERISA"). The Group Policy grants discretionary authority exclusively to Standard to administer disability claims, determine benefit eligibility, interpret the provisions of the Group Policy, and pay eligible claims. Because Standard has discretionary authority, Standard's benefit determination is reviewed through the lens of the arbitrary and capricious standard.

But Duda and his business partner friend Donald Leatherwood, M.D. ("Leatherwood") devised a pleading strategy to usurp discretionary authority for themselves, use the ostensive discretion to approve Duda's disability claim, and then demand that Standard pay.[1] In Count I of the Amended Complaint, Duda asserts a claim against Standard for payment of disability benefits under §502(a)(1)(B) of ERISA, 29 U.S.C. §1132(a)(1)(B), which Standard has answered. In Count II of the Amended Complaint, however, Leatherwood and Northwest assert a claim against Standard to compel payment of disability benefits to Duda under §502(a)(3), 29 U.S.C. §1132(a)(3).

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[1] Duda and Leatherwood are the sole shareholders of Northwest. (Am. Compl. ¶ 67).

The Amended Complaint asserts the legal conclusion that Northwest is an ERISA fiduciary possessing the "right and obligation" to "conduct an evaluation of Standard's rejection of Dr. Duda's claim for LTD benefits." (Am. Compl. ¶¶ 2, 65, 66, 118, 119). The Amended Complaint asserts that Northwest conferred fiduciary powers upon Leatherwood to review Standard's denial of Duda's disability claim. (Am. Compl. ¶¶ 3, 68). And the Amended Complaint asserts that Duda submitted his disability claim to Northwest for review, Leatherwood conducted the review, and Leatherwood determined that Standard wrongfully denied Duda's disability claim. (Am. Compl. ¶¶ 2, 69, 115, 118, 119). Leatherwood and Northwest seek to enforce their determination that Duda should receive disability benefits, and compel Standard to pay, under the guise of obtaining declaratory relief under §502(a)(3).

Leatherwood and Northwest lack Article III standing to assert a §502(a)(3) claim against Standard. They have not sustained an actual or imminent concrete injury, nor do they seek a remedy for themselves. They seek payment of disability benefits to remedy an alleged injury to Duda. Leatherwood and Northwest also lack statutory standing to assert a §502(a)(3) claim against Standard. They do not exercise discretionary authority and therefore do not act in a fiduciary capacity with respect to the administration, determination, or payment of disability claims. The Group Policy confers these fiduciary functions solely and exclusively upon Standard.

Section 502(a)(3) authorizes "appropriate equitable relief" for fiduciary breaches that ERISA does not elsewhere remedy. Duda has asserted a claim for payment of disability benefits under §502(a)(1)(B). He cannot assert the same claim for payment of disability benefits under the

rubric of §502(a)(3) directly, and he cannot assert a §502(a)(3) claim indirectly using Leatherwood and Northwest as his proxy. Throughout the Amended Complaint, Leatherwood and Northwest call themselves "the fiduciary plaintiffs," but they are not acting as fiduciaries at all. Leatherwood and Northwest do not have "the right and obligation" to shepherd the litigation and obtain Duda's disability benefits for him. Count II of the Amended Complaint should be dismissed with prejudice under Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

ARGUMENT

Standard moves to dismiss Count II of the Amended Complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). A motion to dismiss under Fed. R. Civ. P. 12(b)(1) challenges subject matter jurisdiction. Standard challenges jurisdiction "in fact" over Leatherwood's and Northwest's ERISA §502(a)(3) claim in Count II of the Amended Complaint. When jurisdiction is challenged in fact, "[t]he district court (1) does not presume the truthfulness of the allegations in the complaint; (2) places the burden of proof of subject matter jurisdiction on the plaintiff; and (3) has authority to make decisive factual findings." *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 777 F.Supp.2d 869, 877 (E.D. Pa. 2011) (citing *CNA v. U.S.*, 535 F.3d 132, 139 (3rd Cir. 2008); *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3rd Cir. 1977)).

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. The allegations of the complaint must establish a plausible right to relief above the speculative level. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). A plaintiff's obligation to state the grounds of his entitlement to relief "requires more

than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations omitted). Courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). See also *Doug Grant, Inc. v. Greate Bay Casino Corp.*, 232 F.3d 173, 183-84 (3rd Cir. 2000) (Courts do not accept as true "unsupported conclusions and unwarranted inferences.") (citations omitted).

When the complaint fails to state a legally plausible claim, "this basic deficiency should … be exposed at the point of minimum expenditure of time and money by the parties and the court." *Twombly*, 550 U.S. at 558 (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 233-234 (3d ed. 2004), quoting *Daves v. Hawaiian Dredging Co.*, 114 F.Supp. 643, 645 (D. Haw. 1953)).

I. Leatherwood and Northwest Lack Article III Standing.

Constitutional standing is "the threshold question in every federal case." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Constitutional standing is part of the case-or-controversy requirement of Article III. Article III standing limits federal jurisdiction to actual controversies so that the judicial process is not transformed into "a vehicle for the vindication of the value interests of concerned bystanders." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982) (quoting *U.S. v. SCRAP*, 412 U.S. 669, 687 (1973)). Constitutional standing turns on whether "the plaintiff has made out a 'case or controversy' *between himself and the defendant* within the meaning of Article III." *Warth*, 422 U.S. at 498 (emphasis added).

The requirements of Article III standing are not mere pleading elements but rather "an indispensable part of the plaintiff's case…." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Plaintiffs bear the burden of proving that all the requirements of Article III standing have been met. *Id.* See also *Franco v. Conn. Gen. Life Ins. Co.*, 818 F.Supp.2d 792, 809-810 (D.N.J. 2011). When plaintiffs fail to establish constitutional standing, their claims must be dismissed for lack of subject matter jurisdiction.

Article III standing requires that the plaintiff establish an "injury in fact," a "causal connection between the injury and the conduct complaint of," and that it is likely the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-561. A constitutionally recognized "injury in fact" must be both "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Id.* at 560 (citation omitted). A particularized and concrete injury must "affect the plaintiff in a personal and individual way" and cannot be abstract. *Id.* at 560 n.1; *Raines v. Byrd*, 521 U.S. 811, 819 (1997). Because "[t]he standing inquiry focuses on whether the plaintiff is the proper party to bring ... suit," the injury analysis "often turns on the nature and source of the claim asserted." *Raines*, 521 U.S. at 818 (quoting *Warth*, 422 U.S. at 500). See also *Schmolz+Bickenback USA, Inc. v. Dauble*, No. 09-5771, 2011 WL 285123, at *3 (E.D. Pa. Jan. 28, 2011) ("For a plaintiff to have standing to pursue a claim, he must have suffered an injury in fact which is concrete and particularized, as well as actual or imminent.") (citing *Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293, 296 (3rd Cir. 2003)).

A plaintiff asserting a claim for restitution, disgorgement, or a declaration of monetary liability must demonstrate that he sustained an economic loss. See, e.g., *Horvath v. Keystone Health Plan East, Inc.*, 333 F.3d 450, 456 (3rd Cir. 2003) (holding that plaintiff's claims for restitution and disgorgement against an ERISA fiduciary are "individual in nature and therefore require her to demonstrate individual loss") (citations omitted).[2] Even if a plaintiff sues in a representative capacity, as in a class action, the plaintiff first must establish "a distinct and palpable injury *to himself* …." *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 423 (6th Cir. 1998) (emphasis added).

Leatherwood and Northwest endeavor to pursue a claim against Standard under ERISA §502(a)(3), to obtain an award of disability benefits for Duda. They claim to be plan fiduciaries under ERISA, and that §502(a)(3) authorizes suits for equitable relief by plan fiduciaries. But Leatherwood's and Northwest's alleged fiduciary status does not impart Article III standing on them to adjudicate Duda's disability claim for him. In Count II of the Complaint, they allege that Standard "breached" the Group Policy by denying *Duda's* claim for disability benefits. They seek an order directing that Standard "provide benefits to Dr. Duda," "desist from refusing to award Dr. Duda benefits," and pay "Dr. Duda's costs and attorney's fees for bringing this action." (Am. Compl. ¶ 122). They allege an individual monetary loss to Duda, but they fail to allege an injury

[2] Courts have recognized a limited exception to the injury requirement, which is inapplicable to the present case. A plaintiff is not required to demonstrate actual harm to have standing to seek an injunction ordering a plan fiduciary to comply with ERISA's reporting and disclosure requirements. *Gillis v. Hoechst Celanese Corp.*, 4 F.3d 1137, 1148 (3rd Cir. 1993).

in fact *to themselves*. See *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166 (1972) ("[A plaintiff] has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others.").

Duda, not Leatherwood and Northwest, is the proper party to pursue a claim to recover disability benefits. Leatherwood and Northwest do not allege that they personally sustained a "particularized and concrete injury" when Standard declined Duda's disability claim. They posture the legal conclusion that they have "the right and the obligation to protect the plan assets in the event Standard should err" in deciding Duda's disability claim. (Am. Compl. ¶ 119). Leatherwood and Northwest are not obligated to protect plan funds, and they have not incurred an actual or imminent individual economic loss, because there are no plan funds *per se*. Standard pays disability benefits from its own funds under the terms of the Group Policy.

Leatherwood and Northwest do not have "the right and obligation" to shepherd this litigation and obtain Duda's disability benefits for him. Congress provided participants whose claim for disability benefits have been denied with ready access to the federal courts and the right to obtain relief under §502(a)(1)(B), a right that Duda is exercising. Leatherwood and Northwest have not sustained a particularized and concrete personal injury nor do they personally face imminent risk of economic loss.

Leatherwood and Northwest fail to allege an injury to themselves, and they do not seek redress for an injury to themselves. Leatherwood may have an abstract personal interest in Duda's welfare as a friend and business partner, but that personal interest does not trigger the

Article III jurisdiction of the Court. Leatherwood and Northwest do not have Article III standing to seek judicial review of Duda's disability claim under ERISA. "[P]laintiffs may not seek independent review of the disability claims of others." *Davis v. Unum Group*, No. 03-940, 2011 WL 2438632, at *4 (E.D. Pa. June 17, 2011). Without Article III standing to assert their §502(a)(3) claim, Count II of the Amended Complaint must be dismissed. "Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (citations omitted). Standard respectfully requests that the Court dismiss Count II of the Amended Complaint for want of Article III jurisdiction.

II. Leatherwood and Northwest Lack Statutory Standing under ERISA §502(a)(3).

ERISA defines a fiduciary not by title, but according to the nature of the activities performed. A person may be a fiduciary for some purposes and not for others. ERISA provides that a person is a fiduciary only "to the extent" that he acts in a fiduciary capacity when providing a particular service to the plan. *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). "Because an entity is only a fiduciary to the extent it possesses authority or discretionary control over the plan … we 'must ask whether [the entity] is a fiduciary with respect to the particular activity in question.'" *Renfro v. Unisys Corp.*, 671 F.3d 314, 321 (3rd Cir. 2011) (quoting *Srein v. Frankford Trust Co.*, 323 F.3d 214, 221 (3rd Cir. 2003)) (internal citations and quotation marks omitted). See also *Baker v. Kingsley*, 387 F.3d 649, 660 (7th Cir. 2004) ("Because a person is deemed a fiduciary only 'to the extent' he or she exercises discretionary authority, 'a person may be an ERISA fiduciary for some

purposes, but not for others.'") (quoting *Plumb v. Fluid Pump Service, Inc.*, 124 F.3d 849, 854 (7th Cir. 1997)).

In *Renfro*, the Third Circuit (applying the pleading standards of *Twombly*) held that Fidelity, as a directed trustee of investments under Unisys's pension plan, was not acting as an ERISA fiduciary with respect to the selection of asset investment options for the plan. The trust documents specifically provided that Fidelity was not responsible for selecting investment options. *Renfro*, 671 F.3d at 323. The Third Circuit held that while Fidelity may have acted in a fiduciary capacity for limited functions unrelated to the lawsuit, it was not a fiduciary with respect to the selection of plan investments. *Id.*

In Count II of the Amended Complaint, Leatherwood and Northwest allege that they have a "fiduciary obligation" to "conduct an evaluation of Standard's rejection of Dr. Duda's claim for LTD benefits … in order to fulfill their joint fiduciary duty to protect plan assets and assure that the assets are distributed in accordance with the terms of the Plan and the Standard Group LTD Policy." (Am. Compl. ¶ 118). They assert that as "co-fiduciaries," they have the "right and the obligation to protect the plan assets in the event Standard should err in its judgment relative to any benefits decision involving LTD insurance owed to employees of Northwest …." (Am. Compl. ¶ 119).

But Leatherwood and Northwest are not ERISA fiduciaries with respect to the determination and payment of claims for long-term disability benefits. The Group Policy's Allocation of Authority provision grants discretionary authority exclusively to Standard, not to Leatherwood

and Northwest. The Group Policy emphasizes that Standard has the "*exclusive* authority" to administer claims and decide eligibility for benefits, and Standard's decision is "conclusive and binding":

> ALLOCATION OF AUTHORITY
>
> Except for those functions which the Group Policy specifically reserves to the Policyowner, we [Standard] have full and exclusive authority to control and manage the Group Policy, to administer claims, and to interpret the Group Policy and resolve all questions arising in the administration, interpretation, and application of the Group Policy.
>
> Our authority includes, but is not limited to:
>
> 1. The right to resolve all matters when a review had been requested;
> 2. The right to establish and enforce rules and procedures for the administration of the Group Policy and any claim under it;
> 3. The right to determine:
>   a. Your eligibility for insurance;
>   b. Your entitlement to benefits;
>   c. The amount of benefits payable to you;
>   d. The sufficiency and the amount of information we may reasonably require to determine a., b., or c., above.
>
> Subject to the review procedures of the Group Policy, any decision we make in the exercise of our authority is conclusive and binding.

(Ex. A, Group Policy pgs. 13-14; Ex. B, SPD pgs. 13-14). Courts consistently have held that the Allocation of Authority provision grants discretionary authority to Standard. See *Cox v. Standard Ins. Co.*, 585 F.3d 295, 299 (6th Cir. 2009); *Black v. Long Term Disability Ins.*, 582 F.3d 738, 744 (7th Cir. 2009); *Gutta v. Standard Select Trust Ins. Plans*, 530 F.3d 614, 619 (7th Cir. 2008).

Nothing in the Group Policy confers discretionary authority upon Leatherwood and Northwest to review or determine Duda's eligibility for disability benefits or to interpret the

provisions of the Group Policy. The Group Policy's "Policyowner Provisions" identify the duties and responsibilities of Northwest, as the employer and policyholder. Northwest is responsible for determining its employees' contributions toward premiums, paying premiums to Standard, distributing certificates to its employees, and furnishing information such as payroll records upon Standard's request. (Ex. A, Group Policy pgs. 18-19). But Leatherwood and Northwest have no discretionary authority to determine whether Standard should approve and pay disability claims. Leatherwood obviously has a personal interest in having his business partner and friend secure an award of disability benefits from Standard. But Leatherwood's personal interest does not bestow him and his company Northwest with fiduciary standing under ERISA.

The Group Policy confers discretionary authority exclusively upon Standard. Standard is the exclusive fiduciary with respect to the administration of disability claims, the determination of benefit eligibility, the interpretation of the Group Policy's terms, and the payment of eligible claims. Leatherwood and Northwest lack statutory and prudential standing to assert a claim against Standard under ERISA §502(a)(3), warranting dismissal of Count II of the Amended Complaint.

III. Leatherwood and Northwest Fail to State a Claim for Equitable Relief under ERISA §502(a)(3).

Congress enacted §502(a)(3)as ERISA's "catchall" provision to provide a "safety net, offering appropriate equitable relief" when ERISA affords no other statutory remedy. *Varity Corp. v.*

Howe, 516 U.S. 489, 512 (1996).[3] When a plaintiff can assert a claim to recover benefits under §502(a)(1)(B), the plaintiff is foreclosed from seeking essentially the same relief under §502(a)(3). The Court in *Varity Corp.* explained, "[W]e should expect that where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be 'appropriate.'" *Id.* at 515. See also *Mraz v. Aetna Life Ins. Co.*, No. 3:12–CV–805, 2012 WL 4965157, at *4 (M.D. Pa. Oct. 17, 2012) ("The Supreme Court has ruled that overlapping claims for recovery of ERISA benefits and breach of fiduciary duty cannot be maintained under §1132(a)(3) when another portion of ERISA provides adequate relief for a beneficiary's injury.") (citing *Varity Corp.*, 516 U.S. at 515); *Cohen v. Prudential Ins. Co.*, No. 08-5319, 2009 WL 2488911, at *4 (E.D. Pa. Aug. 12, 2009) ("Thus, it seems apparent, after *Varity*, that a district court addressing a challenge to a plaintiff's pleading of claims under both §§1132(a)(1)(B) and (a)(3) can only permit the §(a)(3) claim to progress if the plaintiff can demonstrate that §(a)(1)(B) alone may not provide an adequate remedy.").

The majority of the federal circuit courts apply *Varity Corp.* to bar a plaintiff who has a claim under §502(a)(1)(B) from seeking essentially the same relief under §502(a)(3). A plaintiff "whose injury creates a cause of action under Section 1132(a)(1)(B) may not proceed with a claim under Section 1132(a)(3)." *Korotynska v. Metro. Life Ins. Co.*, 474 F.3d 101, 106 (4th Cir. 2006). Accord

[3] ERISA §502(a)(3) authorizes suits "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]"

LaRocca v. Borden, Inc., 276 F.3d 22, 28 (1st Cir. 2002); *Moore v. LaFayette Life Ins. Co.*, 458 F.3d 416, 428 (6th Cir. 2006); *Antolik v. Saks, Inc.*, 463 F.3d 796, 803 (8th Cir. 2006); *Ogden v. Blue Bell Creameries U.S.A., Inc.*, 348 F.3d 1284, 1287-88 (11th Cir. 2003). Contra *Devlin v. Empire BlueCross & BlueShield*, 274 F.3d 76, 89-90 (2nd Cir. 2001) ("[*Varity Corp.*] did not eliminate a private cause of action for breach of fiduciary duty when another potential remedy is available; instead, the district court's remedy is limited to such equitable relief as is considered appropriate."). Cf. *Powell, II v. Greater Media Inc. Long Term Disability Plan*, No. 07-726, 2008 WL 5188789, at *4 (E.D. Pa. Dec. 10, 2008) (noting that "*Devlin* represents the minority view….").[4]

Duda, however, does not plead §502(a)(1)(B) and §502(a)(3) as alternative theories. Duda tries to circumvent *Varity Corp.* entirely by asserting a claim to recover disability benefits under §502(a)(1)(B), and then using Leatherwood and Northwest as his proxy to obtain the same relief under §502(a)(3). Duda's exclusive remedy for the alleged wrongful denial of disability benefits lies in §502(a)(1)(B). Leatherwood and Northwest have not alleged an injury to themselves nor

[4] The Third Circuit has not decided whether *Varity Corp.* precludes plaintiffs from alleging §502(a)(1)(B) and §502(a)(3) claims in the alternative at the pleading stage, and district courts in the Third Circuit are split. See *Cohen*, 2009 WL 2488911, at *4 (dismissing plaintiff's §502(a)(3) claim at the pleading stage). Cf. *Trechak v. Seton Co. Suppl. Exec. Ret. Plan*, No. 10-227, 2010 WL 5071273, at *5 (E.D. Pa. Nov. 24, 2010) (noting the split among district courts, and holding that it is premature at the pleading stage to determine whether relief is "appropriate" under §502(a)(3)).

sought a remedy for themselves, so their entreaty for "equitable relief" under §502(a)(3) is superfluous and not "appropriate."[5]

Additionally, the relief Leatherwood and Northwest request under §502(a)(3)—payment of disability benefits to Duda—is not available under §502(a)(3). Section 502(a)(3) authorizes only *equitable* relief and not legal relief in the form of monetary damages. Equitable relief is limited to "those categories of relief that were typically available in equity." *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209-210 (2002). "A claim for money due and owing under a contract is 'quintessentially an action at law.'" *Id.* at 210 (quoting *Walmart Stores, Inc. v. Wells*, 213 F.3d 398, 401 (7th Cir.), *cert. denied,* 531 U.S. 985 (2000)). "Money damages are, of course, the classic form of legal relief." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993). See also *Leckey v. Stefano*, 501 F.3d 212, 230 (3rd Cir. 2007), *cert. denied*, 552 U.S. 1186 (2008) ("Legal remedies like money damages—and even *legal* restitution—are not allowed."); *Johannessen v. Sulzer Medica USA, Inc.*, No. 04-3791, 2009 WL 1424491, at *15 (E.D. Pa. May 20, 2009) (holding that plaintiff's request for payment of disability benefits due is legal relief and therefore not available under §502(a)(3)).

Of course, almost any *legal* claim can be cloaked in the language of equity. An action at law to recover disability benefits might be repackaged as an action to "enjoin" the defendant from not

[5] See, e.g., *US Airways, Inc. v. McCutchen*, 663 F.3d 671, 675 (3rd Cir. 2011) (explaining that "appropriate equitable relief" under §502(a)(3) "must be something less than all equitable relief[,]" and "[t]he word 'appropriate' means 'specially suitable,' 'belonging peculiarly [to],' or 'attached as an accessory possession.'") (quoting *Webster's Third New International Dictionary* 106 (1993)) (internal citation omitted).

paying disability benefits or, as attempted by Leatherwood and Northwest, to order Standard "to desist from refusing to award Dr. Duda benefits." (Am. Compl. ¶ 122). But such an action quintessentially seeks legal relief. An action at law does not become "appropriate equitable relief" under ERISA simply because the plaintiff pleads the claim using the language of equity. As stated by the Supreme Court in *Knudson*:

> [S]uits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for money damages, as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty.

Knudson, 534 U.S. at 210 (citation and internal quotation marks omitted). Accord *Pell v. E.I. Dupont de Nemours & Co.*, 539 F.3d 292, 307 (3rd Cir. 2008).

Leatherwood's and Northwest's §502(a)(3) claim in Count II for payment of disability benefits to Duda, and to "desist" from refusing to pay disability benefits to Duda, is nothing more than an action for monetary damages, which is a classic action for legal relief. They seek precisely the same monetary relief that Duda seeks in his §502(a)(1)(B) claim in Count I. Leatherwood and Northwest fail to state a cognizable claim for equitable relief under §502(a)(3), warranting dismissal of Count II with prejudice.

CONCLUSION

Leatherwood and Northwest lack Article III standing, statutory standing, and prudential standing to assert a §502(a)(3) claim against Standard. Additionally, all the relief they seek is legal

in nature, which is not "appropriate equitable relief" under §502(a)(3). Accordingly, Standard requests that the Court dismiss Count II of the Amended Complaint with prejudice.

WHEREFORE, Defendant, STANDARD INSURANCE COMPANY, respectfully requests dismissal of Count II of Plaintiffs' Amended Complaint with prejudice.

Respectfully submitted,

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I hereby certify that on October 26, 2012 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney of record listed below:

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