UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

Case No. **CV 04-9317-JFW (MANx)** Date: March 11, 2005

Title: PILAR LUNA-SINAY *-v-* LIBERTY LIFE ASSURANCE CO. OF BOSTON, et al.

DOCKET ENTRY

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER GRANTING DEFENDANT LIBERTY LIFE ASSURANCE COMPANY OF BOSTON'S MOTION TO DISMISS [filed 01/27/05]**

On January 27, 2005, Defendant Liberty Life Assurance Company of Boston ("Defendant") filed a Motion to Dismiss. On February 28, 2005, Plaintiff filed her Opposition. On March 7, 2005, Defendant filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for March 14, 2005 is hereby vacated, and the matter taken off calendar. After considering the moving, opposing, and reply papers and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background

In 2001, Plaintiff was employed by the University of California (the "University"), where she worked as an Administrative Assistant at the UCLA School of Education. During Plaintiff's employment with the University, she was covered by the University's Supplemental Disability Insurance Plan (the "Policy"), which was issued by Defendant.[1] The Policy provided that if Plaintiff

[1] Plaintiff attached to her Complaint a copy of an explanatory booklet apparently distributed by Defendant, detailing the terms of the Policy. Complaint, Exhibit 1.

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became disabled during her employment with the University, Defendant would pay Plaintiff 70% of her monthly income for the period during which she remained disabled.[2]

Plaintiff alleges that she became disabled on October 5, 2001, after developing (a) bilateral carpel tunnel syndrome, (b) lower back, neck and shoulder injuries and (c) a psychiatric condition involving anxiety and depression. Complaint, ¶ 10. Shortly thereafter, Plaintiff submitted a claim to Defendant for disability benefits that she believed were due under the Policy. On June 14, 2002, Defendant sent Plaintiff a letter denying Plaintiff's claim because she did "not meet the definition of disability" under the Policy. Declaration of Paula McGee, filed January 27, 2005 ("McGee Dec."), Ex.A, p. 1.[3]. Defendant's letter informed Plaintiff that if she questioned Defendant's denial of her claim, she had the following options: (1) "You may have this matter reviewed by the California Department of Insurance if you believe you have been wrongfully denied," (2) "You may request a review of this denial by writing to . . . The Liberty Life Assurance Company of Boston," or (3) "You may request to review pertinent file documents upon which the denial of benefits was based." Plaintiff alleges that she appealed the denial of her claim to Defendant and that on December 27, 2002, Defendant "upheld" the denial of benefits. Complaint, ¶ 12.

On October 1, 2004, more than two years after Defendant sent Plaintiff the letter denying Plaintiff's claim, Plaintiff filed a Complaint alleging causes of action for (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing and (3) unfair business practices in violation of California Business and Professions Code § 17200. Defendant's Motion seeks dismissal of Plaintiff's Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing and Plaintiff's Third Cause of Action for Unfair Business Practices.

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[2] For purposes of the Policy, an insured is considered disabled when the following conditions are met:

> For the first 12 months of Supplemental Disability benefits--Due to a medically determinable physical or mental impairment resulting from a bodily Injury or disease, you are completely unable to perform any and every duty pertaining to your own occupation . . .
>
> From the 13th month of Supplemental Disability benefits onward . . . Due to a medically determinable physical or mental impairment resulting from a bodily Injury or disease, you are completely unable to perform the material and substantial duties of any occupation for which you are reasonably fitted by your education, training or experience.

Complaint, Ex. 1, p. 54.

[3] In deciding a motion to dismiss, the Court may consider "documents whose contents are alleged in the complaint when authenticity is not questioned." *Neilson v. Union Bank of California, N.A.*, 290 F. Supp.2d 1101, 1112 (C.D. Cal. 2003). "[W]hen the plaintiff fails to introduce a pertinent document as part of his pleading . . . defendant may introduce the exhibit as part of his motion attacking the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (citing 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1327, at 76263 (2d ed. 1990)).

II. Legal Standard

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. Accordingly, "[a] Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (*quoting Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g., Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (*citing Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.*; *Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994). Where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by any amendment. *See Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996).

III. Discussion

A. Plaintiff's Second Cause of Action For Breach of the Implied Covenant of Good Faith and Fair Dealing is Time-Barred

The parties agree that a cause of action for breach of the implied covenant of good faith and fair dealing is subject to a two year statute of limitations. *See* California Civil Procedure Code § 339; *Smyth v. USAA Prop. & Cas. Ins. Co.*, 5 Cal.App.4th 1470, 1477 (1992) (applying two year statute of limitations under Section 339 to bad faith claim). However, the parties disagree as to the date on which the statute of limitations commenced to run on Plaintiff's second cause of action. Defendant argues that the limitations period commenced on June 14, 2002, when Defendant sent the letter denying Plaintiff's claim, and that Plaintiff's second cause of action was therefore time-barred when she filed her Complaint on October 1, 2004. Plaintiff contends that the statute of limitations did not commence until December 27, 2002, when Defendant denied Plaintiff's appeal, and that therefore her second cause of action is not time-barred.

Under California law, a cause of action for bad faith denial of insurance benefits accrues as soon as an insured receives an "unequivocal" denial of his or her claim. *Migliore v. Mid-Century Ins. Co.*, 97 Cal.App.4th 592, 604 (2002). The plain language of the letter sent by Defendants

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indicates that it was an unequivocal denial of Plaintiff's claim for benefits under the Policy. For example, the letter contains the following language:

> [M]edical records lack clear documentation of a disability due to an Adjustment Disorder, Carpal Tunnel Syndrome and Chronic Cervical Strain/Sprain . . . there is no medical evidence to support a mental impairment or physical impairment so severe [as to prevent Plaintiff] from performing the duties of [her] occupation as an Administrative Assistant. The medical information provided indicates you ceased working due to job dissatisfaction but you were capable of performing your customary and regular job duties, albeit, in a different department or with a different supervisor.

McGee Dec., Ex. A, pp. 2, 4. In addition, Defendant's letter specifically notified Plaintiff that she did "not meet the policy's definition of disability and [her] *claim has been closed*." *Id.* (Emphasis added.)

Plaintiff concedes that "Defendants denied plaintiff's claim for short term disability benefits on June 14, 2002." Complaint, ¶ 12; *see also Id.* at ¶ 20(c) ("[t]he claim was not denied until June 14, 2002"). Notwithstanding that concession, and the clarity of Defendant's letter, Plaintiff nonetheless argues that the following language rendered Defendant's denial "conditional":

> We reserve the right to make a determination on any additional information that may be submitted. You may request a review of this denial . . . You may request to review pertinent file documents upon which the denial of benefits was based. The written request for review must be sent within 60 days of receipt of this letter and state the reasons why you feel your claim should not have been denied . . . If Liberty Life does not receive your written request for review within 60 days of your receipt of this notice, our claim decision will be final, your file will remain closed and no further review of your claim will be conducted.

McGee Dec., Ex. A, p. 5.

Plaintiff argues that this excerpt from Defendant's letter "constitutes substantial evidence that the claims decision of June 14, 2002 was certainly not final." Opposition, p. 7. However, Plaintiff's assertion is entirely unsupported by the applicable case law. In fact, the *Migliore* court expressly rejected an argument virtually identical to that raised by Plaintiff, holding that "[a] statement of willingness to reconsider does not render a denial equivocal."[4] 97 Cal.App.4th at 605. Similarly, in *Singh v. Allstate Ins. Co.*, 63 Cal.App.4th 135, 138 (1998), the insured received

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[4] The denial letter at issue in *Migliore* contained the following language: "This decision is based upon the information available to us at this time. If you have any other information which you believe may effect [sic] Mid-Century Insurance Company's decision on your claim, please let us know so we can consider it." 97 Cal.App.4th at 605.

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a denial letter advising that "[i]f there is any further information you would like us to consider, please do not hesitate to bring this information to our attention." The *Singh* court held that "[t]he extension of a courtesy, to look at anything else that plaintiffs might have to offer, did not render the denial equivocal."[5] *Id.* at 143; see also *Heighley v. J.C. Penney Life Ins. Co.*, 257 F. Supp.2d 1241, 1257 (C.D. Cal. 2003) ("it is well-established in California that an invitation to provide further information does not render a denial equivocal . . . . It merely suggests that the insurer is willing to reconsider its denial upon receipt of further pertinent information.") (internal quotation marks and citation omitted).

The Court finds that the Defendant's letter was an unequivocal denial of Plaintiff's claim for disability benefits under the Policy and Plaintiff was therefore required to file her bad faith claim within two years of receiving the letter, or by June 14, 2004.[6] Accordingly, Plaintiff's Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing, filed on October 1, 2004, is time-barred and Plaintiff's Motion to Dismiss Plaintiff's Second Cause of Action is GRANTED with prejudice.

B. Plaintiff Lacks Standing to Allege a Cause of Action Under California's Unfair Competition Law

Defendant argues that Plaintiff lacks standing to pursue a claim under California's Unfair Competition Law (California Business and Professions Code § 17200, et seq.) (the "UCL"). On November 2, 2004, California voters approved Proposition 64, which amended certain provisions of the UCL affecting the standing of private plaintiffs to sue under the statute.[7] Specifically, Proposition 64 amended Section 17204 to require that a private plaintiff bringing a UCL action (as opposed to one of the public officials expressly granted standing under Section 17204), must have suffered an actual injury as a result of the defendant's allegedly unfair business practices. Prior to Proposition 64's passage, Section 17204 provided that "[a]ctions for any relief pursuant to this chapter shall be prosecuted exclusively . . . by . . . or upon the complaint of any board, officer, person, corporation or association *or by any person acting for the interests of itself, its members or the general public*." (Emphasis added.) As amended by Proposition 64, Section 17204 now provides that in order for a private individual to have standing to prosecute a claim under the UCL,

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[5] In contrast, in *Prudential-LMI Commercial Ins. v. Superior Court of San Diego County*, 51 Ca.3d 674, 692 (1990), the court held that a "letter from [the insurer] *proposing* that coverage would be denied . . . *unless* the insureds had any additional information that would favor coverage" was not an unequivocal denial. (Emphasis added.)

[6] Although Plaintiff did not specifically raise the argument in her Opposition, in reaching its decision, the Court has considered and rejected the argument that the appeal of the denial of Plaintiff's claim tolled the limitations period. "[O]nce an equivocal denial has been made, the insured's later requests for reconsideration do not serve the purposes of . . . tolling." *Singh*, 63 Cal.App.4th at 148.

[7] The amendments to the UCL contained in Proposition 64 became effective on November 3, 2004. Cal. Const., Art. II, § 10(a).

he or she must have "suffered injury in fact and [have] lost money or property as a result of . . . unfair competition." Cal. Bus. & Prof. Code § 17204.

The California Court of Appeal has consistently held that Proposition 64 applies retroactively to lawsuits pending at the time of its passage. *See Lytwyn v. Fry's Electronics, Inc.*, No. D042401, 2005 WL 407363 (Cal. Ct. App. Feb. 22, 2005); *Bivens v. Corel Corp.*, No. D043407, 2005 WL 388245 (Cal. Ct. App. Feb. 18, 2005); *Benson v. Kwikset Corp.*, No. G030956, 2005 WL 327472 (Cal. Ct. App. Feb. 10, 2005); *Branick v. Downey Savings and Loan Ass'n*, 24 Cal.Rptr.3d 406 (2005). *But see Californians For Disability Rights v. Mervyn's, LLC*, 126 Cal.App.4th 386 (2005) (holding that Proposition 64 does not have retroactive effect). This Court declines to follow *Mervyn's*, accepts the reasoning of *Lytwyn*, *Bivens*, *Benson* and *Branick*, and therefore finds that Proposition 64 applies to this case.[8] Accordingly, unless Plaintiff has "suffered injury in fact," she does not have standing to sue under the UCL.

Plaintiff alleges that the policy at issue in this case "contains provisions which are false and misleading to Plaintiff and to the general public." Complaint, ¶ 27. Specifically, Plaintiff argues that "portions of the policy . . . would lead one to believe that this particular policy is governed by ERISA when it is clearly not. . . Plaintiff in particular and other UCLA employees subject to the terms of this policy would be led to believe that they could not even bring a claim for bad faith since ERISA prohibits such claims for extra contractual damages."[9] Opposition, pp. 14-15. By filing this action, Plaintiff has demonstrated that she was aware that the Policy was not governed by ERISA. Moreover, in light of Plaintiff's second cause of action alleging a claim for bad faith, it is clear that Plaintiff was not misled into believing that she was precluded from alleging a bad faith claim.

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[8] As the *Benson* court concluded, the reasoning of the *Mervyn's* decision "reflects a fundamental misunderstanding of the repeal principle." 2005 WL 327472. In reaching its decision, the Mervyn's court erroneously relied on *Evangelatos v. Superior Court*, 44 Cal.3d 1188 (1988), which involved the statutory amendment of a *common law* right. The California Supreme Court has specifically held that amendments to common law rights are to be treated differently from amendments to statutory rights, such as those effected by Proposition 64:

> [A] cause of action or remedy dependent on a statute falls with a repeal of the statute, even after the action thereon is pending . . . all statutory remedies are pursued with full realization that the legislature may abolish the right to recover at any time . . . This rule only applies when the right in question is a statutory right and does not apply to an existing right of action which has accrued to a person under the rules of the common law.

Callet v. Alioto, 210 Cal. 65, 67-68 (1930).

[9] Because the University is a state agency, the policy was not governed by the Employee Retirement Income security Act of 1974 ("ERISA"). 29 U.S.C. §§ 1002(32), 1003(b)(1).

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The remaining allegations of Plaintiff's third cause of action relate to certain provisions in the Policy that Plaintiff alleges are "violative of public policy and the laws of the State of California." Complaint, ¶ 27. However, Plaintiff has not alleged that Defendant's denial of her claim for benefits was based on, or resulted from, any of the allegedly illegal provisions. Therefore, Plaintiff has not--and cannot--demonstrate that she was harmed by any of these provisions.[10]

Because Plaintiff has conceded that she was not misled by the Policy, nor was she harmed by any provision in the Policy, she has not "suffered injury in fact," and therefore does not have standing to prosecute her third cause of action. Cal. Bus. & Prof. Code § 17204. Accordingly, Defendants Motion to Dismiss Plaintiff's Third Cause of Action is GRANTED with prejudice.[11]

IT IS SO ORDERED.

The Clerk shall serve a copy of this Minute Order on all parties to this action.

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[10] Specifically, Plaintiff alleges that the "limitations on disability benefits payable for mental illness and substance abuse" contained in the Policy violate California law. Complaint, ¶ 27. Plaintiff also alleges that the Policy violated California law by containing "provisions . . . in the glossary section. . . [that] mislead an insured to believe that total disability after the [twelfth] month of disability is only payable if an insured is completely unable to perform the material and substantial duties of 'any occupation.'" Complaint, ¶ 27. Neither of these provisions had anything to do with Plaintiff's claim for disability benefits, nor were they relied on by Defendant in denying Plaintiff's claim.

[11] Although Plaintiff does not request in her Opposition that the Court grant her leave to amend her Complaint, Defendant nonetheless argues that any amendment would be futile. The Court agrees that Plaintiff's Second and Third Causes of Action cannot be saved by amendment. *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004). Where any amendment would be futile, leave to amend should be denied. *Chang*, 80 F.3d at 1296.

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