

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**ROBERT H. SHECKLEY,** )  
 )  
 **Plaintiff** )  
 )  
 v. )  
 )  
 **LINCOLN NATIONAL CORPORATION** )  
 **EMPLOYEES' RETIREMENT PLAN,** )  
 **et al.,** )  
 )  
 **Defendants** )

**Docket No. 04-109-P-C**

**RECOMMENDED DECISION ON MOTIONS TO DISMISS**

All of the named defendants in this action arising under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*, move to dismiss the complaint in two motions. The first of the two motions is brought by defendants Lincoln National Corporation, Lincoln National Life Insurance Company, First Penn-Pacific Life Insurance Company, Lincoln Life and Annuity Distributors, Inc., Lincoln Life and Annuity Company of New York, Lincoln National Financial Institutions Group, Inc., Lincoln National Investments, Inc., Lincoln National Investment Companies, Inc., and Lincoln Financial Distributors, Inc., who call themselves the “Unrelated Defendants,” Motion to Dismiss All Claims Against Defendants Lincoln National Corporation, etc. (“Employers’ Motion”) (Docket No. 28) at 1, and whom the plaintiff calls the “Corporate Defendants,” Plaintiff’s Opposition to Defendants’ Motions to Dismiss (“Opposition”) (Docket No. 31), at 1, while describing them as “subsidiaries of Lincoln National Corporation that have employed members of the proposed Class,” *id.* I will refer to this group as the

employer defendants. The second motion is brought by the remaining defendants, Lincoln National Corporation Employees Retirement Plan, Lincoln National Corporation Benefits Committee, and Lincoln National Corporation Benefits Appeals and Operations Committee, whom all parties call the “plan defendants.” Motion to Dismiss All Claims Against Defendants Lincoln National Corporation Employees Retirement Plan, etc. (“Plan Defendants’ Motion”) (Docket No. 29) at 1; Opposition at 1. I will use that term as well.

### **I. Applicable Legal Standard**

The employer defendants’ motion invokes Fed. R. Civ. P. 12(b)(1), (b)(2) and (b)(6). Employers’ Motion at 1. The plan defendants’ motion invokes only Rule 12(b)(6). Plan Defendants’ Motion at 1. When a defendant moves to dismiss pursuant to Rule 12(b)(1), the plaintiff has the burden of demonstrating that the court has jurisdiction over the subject matter. *Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991); *Lord v. Casco Bay Weekly, Inc.*, 789 F. Supp. 32, 33 (D. Me. 1992). The court does not draw inferences favorable to the pleader. *Hogdon v. United States*, 919 F. Supp. 37, 38 (D. Me. 1996). For the purposes of a motion to dismiss under Rule 12(b)(1) only, the moving party may use affidavits and other matter to support the motion. The plaintiff may establish the actual existence of subject-matter jurisdiction through extra-pleading material. 5A C. Wright & A. Miller, *Federal Practice and Procedure* § 1350 at 213 (2d ed. 1990); see *Hawes v. Club Ecuestre el Comandante*, 598 F.2d 698, 699 (1st Cir. 1979) (question of jurisdiction decided on basis of answers to interrogatories, deposition statements and an affidavit).

A motion to dismiss for lack of personal jurisdiction, governed by Rule 12(b)(2), raises the question whether a defendant has “purposefully established minimum contacts in the forum State.” *Hancock v. Delta Air Lines, Inc.*, 793 F. Supp. 366, 367 (D. Me. 1992) (citation and internal quotation marks

omitted). The plaintiff bears the burden of establishing jurisdiction; however, where the court rules on a Rule 12(b)(2) motion without holding an evidentiary hearing, a *prima facie* showing suffices. *Archibald v. Archibald*, 826 F. Supp. 26, 28 (D. Me. 1993). Such a showing requires more than mere reference to unsupported allegations in the plaintiff's pleadings. *Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 675 (1st Cir. 1992). However, for purposes of considering a Rule 12(b)(2) motion the court will accept properly supported proffers of evidence as true. *Id.* I do not reach the employer defendants' arguments based on Rule 12(b)(2) in this case.

“[I]n ruling on a motion to dismiss [under Rule 12(b)(6)], a court must accept as true all the factual allegations in the complaint and construe all reasonable inferences in favor of the plaintiff[.]” *Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001). The defendants are entitled to dismissal for failure to state a claim only if “it appears to a certainty that the plaintiff would be unable to recover under any set of facts.” *State St. Bank & Trust Co. v. Denman Tire Corp.*, 240 F.3d 83, 87 (1st Cir. 2001); *see also Wall v. Dion*, 257 F. Supp.2d 316, 318 (D. Me. 2003).

## **II. Factual Background**

The operative complaint in this putative class action includes the following relevant factual allegations. The plaintiff, a resident of Maine, was employed by defendant Lincoln National Life Insurance Company between August 14, 2000 and August 9, 2002 in its information technology department. First Amended Class Action Complaint (“Complaint”) (Docket No. 3) ¶¶ 4, 46. Defendant Lincoln National Corporation Employees Retirement Plan (the “plan”) is an employee pension benefit plan as that term is defined in ERISA. *Id.* ¶ 5. The plaintiff was a participant in the plan. *Id.* ¶ 4. Defendant Lincoln National Corporation Benefits Committee (the “committee”) is the plan administrator. *Id.* ¶ 6. Defendant Lincoln National Corporation Benefits Appeals and Operations Committee (the “appeals committee”) is the claims

fiduciary for the plan. *Id.* ¶ 7. Defendant Lincoln National Corporation is the plan sponsor. *Id.* ¶ 8. The other named defendants have participated in the plan as employers. *Id.* ¶ 22.

Employees of participating employers become participants in the plan upon their date of hire. *Id.* ¶ 21. When an employee leaves that employment, he or she will receive the vested balance of his or her account in the plan. *Id.* ¶ 23. In 2002, Lincoln National Corporation implemented a plan to reorganize its information technology organization, as a result of which 49 positions were eliminated. *Id.* ¶ 32. In the course of various restructurings, Lincoln National Corporation entered into outsourcing agreements. *Id.* ¶ 39. Outsourcing is the practice of transferring job functions to third-party vendors who enter into contracts with the employer to provide the services formerly provided by employees. *Id.* ¶ 40.

In April 2002 Lincoln National Corporation notified 26 employees in the information technology department at Lincoln National Life Insurance Company, including the plaintiff, that their positions were being outsourced to Computer Sciences Corporation (CSC). *Id.* ¶¶ 42, 47. Outsourced employees were required to apply to CSC for a position. *Id.* ¶ 47. The plaintiff applied to CSC and was offered employment on June 27, 2002. *Id.* ¶ 50. The plaintiff was subsequently given a summary of his benefits information which stated, *inter alia*, that he was not entitled to severance pay under the circumstances and, with respect to his retirement benefits: “Vested Benefit. You are entitled to benefits under this Plan.” *Id.* ¶ 51. CSC hired 17 of the 26 information technology department employees. *Id.* ¶ 53. After he accepted a position with CSC and despite the information contained in the benefits summary he had been given, the plaintiff was informed by Lincoln National Corporation that his retirement account in the plan would not vest. *Id.* ¶ 54.

On October 30, 2002 Lincoln National Corporation responded to an inquiry from the plaintiff regarding the benefits summary, stating, *inter alia*, that the summary contained an error about his pension

and that his pension was not vested because he had been with Lincoln National Life Insurance Company only since August 14, 2002 and explaining that he was “not job eliminated” but rather “outsourced,” so the provision for vesting upon job elimination did not apply. *Id.* ¶ 55. On March 19, 2003 the plaintiff notified Lincoln National Corporation that he was prepared to file a claim for retirement benefits. *Id.* ¶ 56. By a letter dated June 10, 2003 the appeals committee notified the plaintiff that his retirement benefit had not vested because his job not was “not eliminated (it was outsourced).” *Id.* ¶ 57.

### **III. Discussion**

#### **A. The Employer Defendants’ Motion**

The complaint is presented in three counts. The first count seeks retirement benefits from the plan under ERISA. *Id.* ¶¶ 69-75. Count II alleges breach of fiduciary duty under ERISA. *Id.* ¶¶ 76-81. Count III alleges violation of 29 U.S.C. § 1140, a section of ERISA. *Id.* ¶¶ 82-87. The complaint presents a single prayer for relief against all of the defendants. *Id.* at 16-17. The employer defendants seek dismissal of all three counts. Employers’ Motion at 1. The plaintiff responds that Counts I and II assert claims only against the plan defendants. Opposition at 22. Despite this clarification, the employer defendants continue to request dismissal of these counts as to them. Reply Memorandum in Support of Motion to Dismiss All Claims Against Defendants Lincoln National Corporation, etc. (“Employers’ Reply”) (Docket No. 34) at 1.

The plaintiff has stated that he did not intend Counts I and II to state claims against the employer defendants, and he will be held to that representation. Dismissal in favor of a particular party of claims that are not asserted against that party is not appropriate.

With respect to Count III, the employer defendants contend that this court lacks subject-matter jurisdiction because there are no allegations that they were involved in discriminating against him in any way.

Employers' Motion at 5-6. The section of ERISA invoked in this portion of the complaint provides, in relevant part:

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant . . . for exercising any right to which he is entitled under the provisions of an employee benefit plan . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.

29 U.S.C. § 1140. The employer defendants assert that the plaintiff has not alleged any retaliatory act on their part nor any act intended to interfere with his benefits. Employers' Motion at 5-6. The plaintiff responds that it is sufficient in a putative class action complaint to allege that the defendants acted with the intent to deprive the plaintiff and class members of benefits due to them, as he did in paragraph 86 of the complaint. Opposition at 21-22. However, the statutory language also requires that each defendant have discharged, fined, suspended, expelled, disciplined or discriminated against a participant for the purpose of interfering with the attainment of a right to which that participant may become entitled under the plan. In this regard, the plaintiff contends, without citation to the complaint, that it is sufficient that the complaint alleges that each defendant discriminated against members of the class. *Id.* at 21. Paragraph 86 of the first amended complaint, construed as required in connection with a motion to dismiss, does allege the necessary intent. *See Davidson v. Liberty Mut. Ins. Co.*, 998 F. Supp. 1, 7 (D. Me. 1998). However, "mischaracterization of the job eliminations affecting Plaintiff and the Class," the only specific act by the defendants alleged in Count III, Complaint ¶¶ 85-86, cannot reasonably be construed, even under the favorable standard applicable to motions to dismiss, to allege discrimination against the plaintiff and other members of the putative class. Nor can the complaint reasonably be read to allege that any of the defendants "outsourced" the plaintiff's job, or that of any putative class member, in order to deprive him or them of retirement benefits. Indeed, the complaint does not allege that any defendant other than Lincoln

National Corporation and the appeals committee “mischaracterized” this change in employers as “outsourcing” rather than “job elimination.” Even with respect to Lincoln National Corporation, one of the employer defendants, the alleged “mischaracterization” is not itself a discharge, fine, suspension, expulsion, act of discipline or discriminatory act.

Under Rule 12(b)(6), therefore, the complaint fails to state a claim on which relief may be granted against any of the employer defendants, all of whom are therefore entitled to dismissal of Count III. It is not necessary to consider these defendants’ arguments based on subject-matter or personal jurisdiction.

### **B. The Plan Defendants’ Motion**

The plan defendants first argue that the plaintiff’s claims are time-barred under the terms of the plan. Plan Defendants’ Motion at 8-10. The plan’s Summary Plan Description provides, in relevant part:

To request a review [of the denial of a claim for benefits], the claimant must file a written request with the LNC Benefits Appeals and Operations Committee . . . .

A final decision of [sic] the review will be made by the LNC Benefits Appeals and Operations Committee. . . .

The decision upon review will be final. It will be communicated in writing and contain the specific reason(s) for the decision, will contain references to the pertinent Plan language upon which the decision was based, and will be written in a manner easily understood by the claimant. Claimants will not be entitled to challenge the LNC Benefits Appeals [and] Operations Committee’s determinations in judicial or administrative proceedings without first filing the written request for review and otherwise complying with the claim procedures. If any such judicial or administrative proceeding is undertaken, the evidence presented will be strictly limited to the evidence timely presented to the LNC Benefits Appeals and Operations Committee. In addition, any such judicial or administrative proceeding must be filed within six months after the Committee’s final decision.

Lincoln National Corporation Employees’ Retirement Plan *Summary Plan Description* (“SPD”) (Exh. 2 to Employers’ Motion) at 11. The plaintiff was notified by the appeals committee by letter dated June 10,

2003 “that he was not entitled to vest in his retirement benefits.” Complaint ¶ 57. This action was filed on May 28, 2004. Docket.

“Courts have consistently found that such contractual limitation provisions are legally enforceable and binding on claimants.” *McLaughlin v. UNUM Life Ins. Co. of Am.*, 224 F. Supp. 2d 283, 290-81 (D. Me. 2002) (ERISA case). The plaintiff does not contend that the contractual limitations period in this case is unreasonable on its face, but rather that the plan did not follow its own terms and applicable federal regulations with respect to the limitations period, making it unreasonable to apply the contractual term to the plaintiff under the circumstances. Opposition at 4. Specifically, the plaintiff argues that the plan defendants “failed to properly communicate to Plaintiff his right to appeal the refusal to vest his retirement account, including in particular that he would be barred from filing a lawsuit if he did not act within a time certain.” *Id.* at 8. He contends that the June 10, 2003 letter from the appeals committee was required to state that he “was entitled to receive a copy of all documents, records, and other information relevant to a claim for benefits” and to include a “description of Plaintiff’s ERISA rights, including, most importantly, that a civil action had to be filed within six months.” *Id.* at 9. He contends that the SPD includes these requirements at pages 10-11 and that they also appear in 29 C.F.R. § 2560.503-1(g) and (j). *Id.* at 6-7, 9.

The plan defendants respond that the SPD contains no such requirements, that 20 C.F.R. § 2560.503-1(g) applies only to notification of initial decisions made by a plan and not to notification of its decisions after an internal appeal, which is the case here, and that 20 C.F.R. § 2560.503-1(j), which does apply to the June 10, 2003 letter, does not require a plan to tell a claimant anything beyond the fact that he has a right to seek review in court of the denial of his internal appeal. Reply Memorandum in Support of Motion to Dismiss All Claims Against Defendants Lincoln National Corporation Employees Retirement

Plan, etc. (“Plan Reply”) (Docket No. 33)<sup>1</sup> at 1-3. They do not address the plaintiff’s argument concerning the asserted requirement that the June 10, 2003 letter include a statement advising him of his right to receive copies of documents.

The defendants are correct with respect to the SPD. The requirements for a notice to the claimant listed at page 10 of that document apply only to the notice of an initial determination. SPD at 10. The June 10, 2003 letter, which by its terms was issued by the appeals committee after an internal review of an initial denial of benefits, Letter dated June 10, 2003 from Patricia Harrold, secretary of the Benefits Appeals and Operations Committee (Exh. 5 to Docket No. 28) at 1, was required by the SPD to “contain the specific reason(s) for the decision,” to “contain references to the pertinent Plan language upon which the decision was based” and to “be written in a manner easily understood by the claimant,” SPD at 11. The plaintiff does not contend that the letter at issue failed to comply with any of these requirements.

The defendants are also correct with respect to 29 C.F.R. § 2560.503-1(g). That subsection of the regulations applies by its terms only to the notification of a plan’s initial denial of a claim for benefits. It precedes a lengthy subsection that sets forth the procedure for appeal of an initial adverse determination, 29 C.F.R. § 2560.503-1(h), which in turn is followed by a subsection entitled “Manner and content of notification of benefit determination on review,” 29 C.F.R. § 2650.503-1(j). It is the latter subsection that applies to the June 10, 2003 letter. This subsection requires only that the notification include “a statement of the claimant’s right to bring an action under” ERISA, 29 C.F.R. § 2560.503-1(j)(4), not that it include any mention of the contractually limited period for doing so, if any. Two of the cases cited by the plaintiff in support of his position on this issue deal with the notification requirement of what is now 29 C.F.R. §

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<sup>1</sup> This reply memorandum bears the following notation on the title page: “Oral Argument Requested.” The plaintiff (*continued on next page*)

2560.503-1(g)(1)(iv), not the subsection that is applicable here. *Epright v. Environmental Res. Mgmt., Inc. Health & Welfare Plan*, 81 F.3d 335, 341-42 (3d Cir. 1996); *White v. Jacobs Eng'g Group Long-Term Disability Benefit Plan*, 896 F.2d 344, 350-51 (9th Cir. 1989). Two were decided on a basis not applicable here, a finding that the terms used by the benefits plan at issue to specify the point at which the contractual limitations period began to run were ambiguous, without reference to the regulations. *Mogck v. Unum Life Ins. Co. of Am.*, 292 F.3d 1025, 1028-29 (9th Cir. 2002); *Skipper v. Claims Servs. Int'l*, 213 F.Supp.2d 4, 6-7 (D.Mass. 2002) (citing *Mogck*). In the remaining case cited by the plaintiff, *Kodes v. Warren Corp.*, 24 F.Supp.2d 93, 101-02 (D.Mass. 1998), the court held that the plan had not proved that the claimant received the notices at issue, which again is not the case here.

The June 10, 2003 letter cannot reasonably be construed to include “[a] statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant’s claim for benefits,” 29 C.F.R. § 2560.503-1(j)(3), the only remaining basis on which the plaintiff contends that the contractual limitations period should not be enforced. The question therefore is whether strict compliance with this regulatory requirement is necessary under the circumstances of this case. The amended complaint does not mention this requirement nor does it contend that the plaintiff was harmed by the plan defendants’ lack of compliance. The First Circuit has held that a “technical defect” in a letter denying a claim under ERISA — referring specifically to the requirements now included in 29 C.F.R. § 2560.503-1(g) — will not invalidate a contractual limitations period when the claimant knew that he had a cause of action within that period. *I.V. Servs. of Am., Inc. v. Inn Dev. & Mgmt., Inc.*, 182 F.3d 51, 57 (1st Cir. 1999). The requirement that a claimant be notified of his right to

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opposes this request. Docket No. 36. Because the parties’ papers provide a sufficient basis on which to decide the  
(continued on next page)

have copies of relevant documents has little or no connection to a claimant's right to bring a court action seeking review of the denial of his claim for benefits; that connection is certainly more attenuated than any connection between a requirement that he be informed of his right to take court action and a contractual limitation on that right. Telling the plaintiff that he had a right to obtain copies of certain documents would not make it more or less likely that he would bring a court action within the contractual limitations period. Indeed, the complaint itself makes relatively clear that the plaintiff knew no later than March 19, 2003, before he could have received the June 10, 2003 letter, that he had "a claim for retirement benefits" that he could pursue in court. Complaint ¶¶ 55-57. I can only conclude that the plan defendants' failure to inform the plaintiff of his right to obtain documents relevant to his claim does not invalidate the contractual limitations period otherwise applicable.

Accordingly, the plan defendants are entitled to dismissal of the plaintiff's claims. It is not necessary to reach the other arguments presented by the plan defendants.

#### **IV. Conclusion**

For the foregoing reasons, I recommend that the defendants' motions to dismiss be **GRANTED**.

#### **NOTICE**

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

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motion, the request is denied.

Dated this 15th day of December, 2004.

/s/ David M. Cohen  
David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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**ROBERT SHECKLEY, on behalf  
of himself and all other persons  
similarly situated**

represented by **RANDALL B. WEILL**  
PRETI, FLAHERTY, BELIVEAU,  
PACHIOS & HALEY, LLC  
PO BOX 9546  
PORTLAND, ME 04112-9546  
791-3000  
Email: rweill@preti.com  
**GREGORY PAUL HANSEL**  
PRETI, FLAHERTY, BELIVEAU,  
PACHIOS & HALEY, LLC  
PO BOX 9546  
PORTLAND, ME 04112-9546  
791-3000  
Email: ghansel@preti.com

V.

**Defendant**

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**LINCOLN NATIONAL  
CORPORATION  
EMPLOYEES' RETIREMENT  
PLAN**

represented by **KENNETH SALINGER**  
PALMER & DODGE  
111 HUNTINGTON AVENUE  
BOSTON, MA 02199-7613  
617-239-0561  
Email: ksalinger@palmerdodge.com  
**PETER J. BRANN**  
BRANN & ISAACSON  
184 MAIN STREET  
P. O. BOX 3070  
LEWISTON, ME 04243-3070  
786-3566  
Email: pbrann@brannlaw.com

