

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

LINDA E. DAVISON, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 2:13-cv-00054-GZS  
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 )  
 AETNA LIFE INSURANCE COMPANY, )  
 )  
 Defendants )

**PROCEDURAL ORDER ON DEFENDANT’S MOTION TO DISMISS**

Plaintiff Linda E. Davison is the widow of Kenneth J. Davison. She filed suit in state court, pro se, against Aetna Life Insurance Company in an effort to obtain life insurance proceeds from the Maine School Management Association Group Insurance Trust, an employee benefit plan funded in whole or in part by a group life insurance policy issued by Aetna. Aetna removed the action to this court based on federal question jurisdiction because Davison’s state law claims are superseded by the Employee Retirement Income Security Act of 1974 (“ERISA”). Aetna has filed a motion to dismiss the case, with prejudice, asserting ERISA preemption and failure to state a claim. The district court referred the motion for report and recommended decision by a magistrate judge. Based on my review of the pleadings, there is a definite pleading deficiency in the complaint, but Davison, based on her opposition and surreply, appears to want to cure. As a pro se plaintiff, Davison should have an opportunity to cure that deficiency before the court rules on Aetna’s motion. This order affords Davison that opportunity, subject to Rule 11 and the filing deadline set forth in the conclusion of this order.

## THE PLEADINGS

A motion to dismiss for failure to state a claim is ordinarily evaluated in light of the allegations contained within the four corners of the plaintiff's complaint. Young v. Lepone, 305 F.3d 1, 10-11 (1st Cir. 2012). An exception to the four-corner rule exists, however, when the complaint's allegations "revolve around a document whose authenticity is unchallenged," in which case the document in question "effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6)." Id. at 11 (quoting Beddall v. State St. Bank & Trust Co., 137 F.3d 12, 17 (1st Cir. 1998)). In this case, Davison has incorporated two letters from Aetna into her complaint.

### **Linda Davison's Complaint**

According to Linda Davison's complaint and the documents attached to it, she and Kenneth Davison, her husband, received a letter from an Aetna representative roughly six months prior to Mr. Davison's death. The author of the letter, Linda DeCarli, a "consultant" with Aetna, wrote Mr. Davison to inform him that his request for extension of his life insurance coverage, without the payment of further premiums, was granted on account of permanent and total disability. In the letter, DeCarli identified the policy in question as the Maine School Management Association Group Insurance Trust benefit plan and stated that the total amount of insurance approved for waiver of premium was \$138,424.00, which consisted of \$34,424 for basic term life insurance and \$104,000 for supplemental term life insurance. (July 17, 2008, DeCarli Letter, Complaint Ex. A, ECF No. 1-1.)

Mr. Davison died on January 7, 2009. Linda Davison notified Aetna of the death in a phone conversation. She was told that there was an active policy and was instructed to complete a claim form from the Maine School Management Association ("MSMA") and fax it to Aetna

with a copy of the death certificate. Davison obtained the form from MSMA that day and faxed the specified documentation to Aetna. (Complaint at 1.)

On or after February 27, 2009, Davison received another letter from DeCarli. This time DeCarli was careful to identify herself as a “premium waiver consultant” in Aetna’s “premium waiver unit.” (Feb. 27, 2009, DeCarli Letter, Complaint Ex. B, ECF No. 1-1.) In this letter DeCarli indicated that the earlier continuation of coverage was approved in error because Mr. Davison was not enrolled in the MSMA plan, but rather in what DeCarli described as the “Particating [sic] Local District Fund (pension plan).” DeCarli requested that Davison “please contact Jean Dunnell . . . at the Portland School, to verify the life insurance coverage Mr. Davison may have elected through another entity as a result of his employment with the school.” (Id.) Davison found this surprising because as late as January 2009 she was being told over the phone that Mr. Davison had an “active” policy.

Davison alleges that she is entitled to collect life insurance proceeds through the MSMA plan on the following grounds:

This was an error on the part of an Aetna representative. It was not our error, it was Aetna’s error. Aetna didn’t realize or notify Kenneth of the error. It wasn’t until I reported his death that the error was realized, but it still does not explain Aetna’s database having Kenneth’s policy as “ACTIVE” in January 2009. Due to the errors and failures on Aetna’s behalf, I believe Aetna is responsible for the actions of their employees and should have to pay the total policy due as well as interest and damages. We were left with the impression that he did in fact have this policy.

(Complaint at 1.) Davison contends that because Aetna caused them to believe that Mr. Davison was enrolled in the MSMA policy and because Aetna did not timely notify Mr. Davison of the error Aetna should not be able to deny coverage. (Id.) She advances claims of (1) breach of the implied covenant of good faith and fair dealing; (2) misrepresentation and reliance by the insured; (3) breach of contract; and (4) negligence. (Id. at 3.)

Davison queries, “Why did Linda DeCarli send a very descriptive letter to Kenneth concerning his policy, if in fact he did not have a policy?” (Id. at 4.) She would also like to know why she was told repeatedly by Aetna customer service representatives that the policy was active, why Mr. Davison would even be in their database if he did not have an active policy, how Aetna would be able to calculate the amount of insurance if there were no policy, and why she would be asked to complete and fax documentation if there were no policy. (Id.) She says that the representations received prior to the February 27, 2009, letter gave her and Mr. Davison “the impression that he ‘DID’ have a life insurance policy in the amount of \$138,424.” (Id.) In a concluding plea, Davison says, “It is the responsibility of Aetna to accept the errors made by their Representatives, accept the letter as a ‘signed contract’ describing life insurance benefits by Linda DeCarli and verbal confirmations of an ‘ACTIVE’ policy made by telephone Customer Service Representatives.” (Id.) In addition to \$138,424, Davison seeks interest and additional damages for her time and effort, court fees, and emotional distress. (Id.)

### **Aetna’s Motion to Dismiss**

Aetna has filed a motion to dismiss that would considerably expand the background facts if the court were to consider Aetna’s additional representations in the course of its review. However, Aetna’s additional factual statements fall outside the four corners rule, so to do so would require the conversion of the motion to dismiss into a motion for summary judgment and the court would need to provide Davison with “a reasonable opportunity to present all the material that is pertinent to the motion.” Fed. R. Civ. P. 12(d).

According to Aetna’s representations and affidavits submitted in support of its motion, Mr. Davison was not enrolled in the MSMA plan at the time of his death but was enrolled in a different employee benefit life insurance plan administered by Aetna. That other plan is the

Maine State Retirement System life insurance plan. According to Aetna, after it informed Davison of its error concerning the MSMA plan, Davison successfully filed a claim for life insurance proceeds through the Retirement System plan and received \$100,000 in life insurance proceeds. (Affidavit of Linda DeCarli, ECF No. 14.<sup>1</sup>) According to Aetna, Davison is seeking to collect on two policies when her husband elected to enroll in and paid premiums for just one. In addition to contending that Davison will not be able to prove that her husband was enrolled in the MSMA plan, Aetna also argues that the complaint is defective because the four state law claims are preempted by ERISA and because Davison nowhere alleges that her husband “ever elected coverage or was otherwise enrolled for coverage under the MSMA Life Plan” or that he “ever paid premiums for coverage under the MSMA Life Plan.” (Motion to Dismiss at 2-3, ECF No. 13.) Aetna says that Davison’s entire suit is premised entirely on the mistaken legal theory that Davison is entitled to insurance proceeds under the MSMA plan because Aetna misrepresented the existence of coverage and Aetna now has to make good on those representations even if they were made in error. (Id. at 3.)

### **Davison’s Response**

In her response to the motion, Davison says it is false to say that her husband was never enrolled in the MSMA plan and she attaches an enrollment form bearing the MSMA stamp that he filled out in October 2001. (Response at 1, ECF No. 15; MSMA Enrollment Form,<sup>2</sup> ECF No. 15-2.) She also indicates that the Portland School Department’s union hired counsel for her, but later refused to continue paying the legal fees when they received Aetna’s explanation. Davison says she bases her claim on the enrollment form, the July 17, 2008, letter, the fact that the

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<sup>1</sup> Attached to the DeCarli affidavit are MSMA plan documents, Retirement System plan documents, and a letter from Aetna to Davison’s former counsel attempting to explain the mistake and the fact that Aetna paid \$100,000 to Davison pursuant to the Retirement System Plan in April 2009.

<sup>2</sup> The enrollment form reflects employment with Maine School Administrative District 57 rather than the Portland Schools. Portland Schools is not part of SAD 57.

Portland Schools' human resources director told her that the letter was correct, and the fact that the union went so far as to hire legal representation for her. (Response at 1, 4.) Davison also suggests she would like to pursue a claim of defamation because Aetna's motion states that she is attempting to recover "a windfall," which she regards as a put down. (Response at 1.)

Davison's response is partially designed to counter representations made in a letter exhibit introduced by Aetna in support of its motion. The letter is dated July 9, 2010, and was sent by Linda DeCarli to Jerry Conley, Davison's former counsel. The letter is not necessarily of record for purposes of the motion to dismiss because it is not referenced in the complaint or attached to the complaint and it would be necessary to convert the motion to a motion for summary judgment to incorporate it. Moreover, the letter is hearsay and therefore lacks evidentiary quality. However, if Davison were to admit facts stated in the letter, that could have a bearing on the court's ruling on the motion to dismiss.

In the letter, DeCarli states that Nicole Greenlaw, a representative of the Retirement System plan, informed DeCarli in July 2008 that Mr. Davison was enrolled in life insurance coverage since 2002, that the MSMA premium waiver claim was mistakenly approved based on Greenlaw's communication about the Retirement System plan, and that after the approval "Wendy from MSMA called" because she received notice of the approval and sought to inform Aetna that Mr. Davison did not actually have coverage through MSMA. (ECF No. 14-5 at 2.)

Addressing these representations, Davison says the following:

Wendy Greenlaw called Aetna on July 28, 2008, to state Mr. Davison DID NOT [sic] life insurance coverage. Why didn't Linda DiCarli call or send a follow-up letter to notify Mr. Davison (approx. 5 months prior to his death) of the letter being sent in error. Mr. Davison and I (Mrs. Davison) were left with the impression and led to believe that he DID have coverage. It was Aetna's responsibility to notify Mr. Davison that the letter was sent in error and give him the opportunity to clarify coverage with the proper people. That was lack of customer service and proper business practices to inform clients of errors when

made known. Linda DeCarli should lose her position for the major errors made in this case that has caused my family and I 4 years of distress trying to get this resolved.

(Response at 3-4.) Although there is no clear admission in the response that Davison's entire claim is based exclusively on the idea that the mistake by DeCarli was sufficient to extend life insurance coverage to Mr. Davison, Davison's language seems to suggest that is the case.

### **Aetna's Reply**

The most salient factual representation found in Aetna's reply (ECF No. 16) is that Mr. Davison separated from employment with the Portland Schools in 2001 and briefly held a job with Maine School Administrative District 57. It was while employed at SAD 57, says Aetna, that Mr. Davison completed the MSMA life insurance enrollment form dated October 2001. According to Aetna, Mr. Davison left SAD 57 to return to work with the Portland Schools in January 2002, at which time his participation in the MSMA group life insurance policy ceased, and Mr. Davison elected to get his life insurance through the Retirement System plan and not through the MSMA plan. (Reply at 3; Supplemental Declaration of Linda DeCarli ¶ 7, ECF No. 16-1; June 10, 2010, Letter from Gerard Conley to Robin Caulton, at 2, ECF No. 16-2.) Also attached to the reply are executed enrollment forms suggesting that when Mr. Davison was rehired, he enrolled in the MSMA plan for long term disability coverage, but enrolled in the Retirement System plan for life insurance.<sup>3</sup> (MSMA Long Term Disability Enrollment/Change Form, ECF No. 16-3; Maine State Retirement System Application for Group Life Insurance, ECF No. 16-4.)

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<sup>3</sup> Mr. Davison's participation in the MSMA plan's LTD program suggests that his move from SAD 57 to the Portland Schools did not disqualify him from continued participation in the MSMA plan's life insurance program.

## **Davison's Surreply**

Davison has filed a surreply in which she emphasizes that she believes Aetna engaged in “bad business practices and procedures.” (ECF No. 17.) Davison also suggests that she cannot rule out the possibility that the lack of evidence of enrollment is due to yet another administrative error. (Id. at 3.) Davison also provides some additional factual allegations under a timeline heading, including that Mr. Davison met with the Portland Schools’ HR director in June 2007 and that the HR director told him at that time that he had coverage under two policies. (Id. at 6.) Davison asks that Aetna’s motion be denied because she believes she has “provided enough evidence to prove the Defendant does not have all the facts in this case and is using [her] lack of legal background and legal procedure as grounds to dismiss.” (Id. at 7.)

## **DISCUSSION**

Aetna seeks the dismissal of the lawsuit on the grounds of pleading irregularities, ERISA preemption, and failure to state a claim. Davison’s complaint is atypical in its form<sup>4</sup> and Aetna is correct that ERISA preempts the state law claims recited by Davison in her complaint. However, these issues, standing alone, would not justify dismissal of Davison’s complaint. The rules of pleading do not require a plaintiff to identify the correct legal theory if the complaint sets forth sufficient factual allegations showing a plausible entitlement to relief. Fed. R. Civ. P. 8(a)(2); Fitzgerald v. Codex Corp., 882 F.2d 586, 589 (1st Cir. 1989). If these were the only issues, the court could readily construe Davison’s complaint to state a claim for benefits pursuant to ERISA’s civil enforcement provision and it could also cure any errors in the form of the complaint with a simple order to amend. What raises the real obstacle for Davison is Aetna’s argument that she fails to state a claim because she fails to allege that Mr. Davison was actually enrolled in the MSMA plan’s life insurance benefit at the time of his death. For reasons that

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<sup>4</sup> The complaint is not so atypical of pro se filings.

follow, Davison deserves an opportunity to cure the asserted pleading deficiency. When Davison considers whether to allege that Mr. Davison was enrolled, she must make her decision in light of Rule 11(b) of the Federal Rules of Civil Procedure, which is reproduced for her in the course of the following discussion.

#### **A. Summary Dismissal Standards**

Rule 12 of the Federal Rules of Civil Procedure provides that a complaint can be dismissed for, among other things, “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To state a claim, a plaintiff must set forth (1) “a short and plain statement of the grounds for the court’s jurisdiction”; (2) “a short and plain statement of the claim showing that the pleader is entitled to relief”; and (3) “a demand for the relief sought.” Fed. R. Civ. P. 8(a). In deciding a motion to dismiss, the court accepts as true the factual allegations of the complaint, draws all reasonable inferences in favor of the plaintiff that are supported by the factual allegations, and determines whether the complaint, so read, sets forth a claim for recovery that is “plausible on its face.” Eldredge v. Town of Falmouth, 662 F.3d 100, 104 (1st Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009)). “A claim is facially plausible if supported by ‘factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” Id. (quoting Iqbal, 129 S. Ct. at 1949). A plaintiff’s complaint need not provide an exhaustive factual account, only “a short and plain statement.” However, the allegations must be sufficient to identify the manner by which the defendant subjected the plaintiff to harm and the harm alleged must be one for which the law affords a remedy. Iqbal, 129 S. Ct. at 1949.

When the plaintiff is a pro se litigant, the Court will review his or her complaint subject to “less stringent standards than formal pleadings drafted by lawyers.” Haines v. Kerner, 404

U.S. 519, 520 (1972). Additionally, the pleadings of pro se plaintiffs are generally interpreted in light of supplemental submissions, such as any response to a motion to dismiss. Wall v. Dion, 257 F. Supp. 2d 316, 318 (D. Me. 2003). In some circumstances, if it appears that a pro se litigant might be able to plead adequate facts if he or she better understood the applicable law, the Court may provide some opportunity to understand what the law requires, along with an opportunity to supplement the pleadings. Rodi v. S. New Eng. Sch. of Law, 389 F.3d 5, 20 (1st Cir. 2004); Cote v. Maloney, 152 Fed. App'x 6, 8 (1st Cir. 2005) (unpublished).

## **B. ERISA Preemption and Enforcement**

Congress enacted the Employee Retirement Income Security Act to “protect . . . the interests of participants in employee benefit plans and their beneficiaries’ by setting out substantive regulatory requirements for employee benefit plans and to ‘provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.’” Aetna Health Inc. v. Davila, 542 U.S. 200, 208 (2004) (quoting 29 U.S.C. § 1001(b)). ERISA is designed to “provide a uniform regulatory regime over employee benefit plans.” Id. Consequently, ERISA includes a “supercedure” provision to the effect that the Act “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.” 29 U.S.C. § 1144(a). This expansive preemption provision ensures that the regulation of employee benefit plans will be “exclusively a federal concern.” Davila, 542 U.S. at 208 (quoting Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523 (1981)).

ERISA includes “an integrated system of procedures for enforcement” that delimits the remedies available to participants frustrated with plan administration or benefits determinations. Id. (quoting Mass. Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 147 (1985)). This civil enforcement system is essential to the achievement of ERISA’s objectives and overrides state

causes of action that would supplement or expand upon the remedial options prescribed by Congress. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 137 (1990); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 52 (1987). “Therefore, any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted.” Davila, 542 U.S. at 209.

Aetna’s ERISA preemption argument raises a factual issue that turns on two questions: (1) whether the plan at issue is an employee benefit plan and (2) whether the cause of action relates to the plan. Colonial Life & Accident Ins. Co. v. Medley, 572 F.3d 22, 29 (1st Cir. 2009). “The question of whether an ERISA plan exists is a question of fact, to be answered in light of all the surrounding facts and circumstances from the point of view of a reasonable person.” Wickman v. NW Nat’l Ins. Co., 908 F.2d 1077, 1082 (1st Cir. 1990) (citation omitted). “A law ‘relates to’ an employee benefit plan . . . if it has a connection with or reference to such a plan.” Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 98, 77 L. Ed. 2d 490, 103 S. Ct. 2890 (1983).

Davison’s pleadings conclusively establish that the life insurance proceeds she seeks would come from an employee benefit plan. Moreover, the fact that her state law claims seek to recover money from an employee benefit plan establishes that those claims “relate to” an employee benefit plan. Her claims are therefore preempted by ERISA. Davila, 542 U.S. at 209; see also Wickman v. NW Nat’l Ins. Co., 908 F.2d 1077, 1082 (1st Cir. 1990) (explaining that common law contract and torts claims seeking ERISA plan benefits are pre-empted by federal law). Although Davison’s state law claims are preempted, it does not follow that her complaint must be dismissed. Davison’s claim may be construed as an ERISA “civil enforcement” claim arising under 29 U.S.C. § 1132(a)(1)(B). However, to state a viable ERISA enforcement claim,

Davison must allege that Mr. Davison was a plan participant at the time of his death and that she is a plan beneficiary. Id. § 1132(a)(1).

As currently drawn, Davison's complaint does not actually allege that Mr. Davison was a participant in the MSMA plan's group life insurance policy at the time of his death. To the contrary, there is an appearance that her claim is premised entirely on the idea that a mistake by Ms. DeCarli is a sufficient legal basis for her to draw \$138,424.00, plus interest, from the plan. I am unaware of any ERISA precedent that would permit an award of ERISA plan benefits to Davison if Mr. Davison was not enrolled in the plan.<sup>5</sup> Davison's pleadings fail to state a claim at present,<sup>6</sup> but she asserts in her surreply that she cannot rule out the possibility that the lack of evidence of enrollment is due to yet another administrative error. As a pro se plaintiff Davison should have an opportunity to amend her complaint to allege that Mr. Davison was a participant in the MSMA plan's group life insurance policy at the time of his death. The following standard applies to any allegation Davison might wish to present to this court in that regard:

**(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so

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<sup>5</sup> In the event that Mr. Davison was not enrolled in the MSMA plan's group life insurance policy, DeCarli's mistaken representation to the contrary would not be sufficient to create a contract of insurance between Mr. Davison and Aetna.

<sup>6</sup> As for Davison's indication that she feels she has been defamed by the "windfall" argument, Aetna's assertion of such an argument in the context of litigation is absolutely privileged and cannot support a claim of defamation. Office Max Ins. v. Sousa, 773 F. Supp. 2d 190, 237 (D. Me. 2011) (citing Dineen v. Daughan, 381 A.2d 663, 664 (Me. 1978)).

identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b).

In summary, for purposes of the current motion to dismiss, there is at least one essential missing allegation. The identified mistakes by DeCarli do *not* support a recovery under ERISA because those mistakes do not create a contract for insurance and in the absence of a contract of insurance Davison cannot recover. It appears that Davison may have intended to allege that her husband was enrolled in the MSMA plan's life insurance program and, if so, Davison should be given leave to file an amended complaint so stating. If she files a legally sufficient motion to amend, accompanied by a proposed amended complaint that suffices to state a claim, her amended complaint may be allowed. That proposed amended complaint, if it is filed, should also collect all of the various factual<sup>7</sup> allegations spread throughout what are now three separate filings (the complaint, the response to the motion, and the surreply) and set them forth in a consolidated pleading. It is sufficient for pleading purposes that Davison allege the existence of *facts* that would support a recovery. For ease of reference, and to facilitate Aetna's ability to answer, **the facts should be set forth sequentially and in separate numbered paragraphs.** The jurisdictional basis for any such amended complaint will be based on 29 U.S.C. § 1144(a) and the claim shall come under ERISA's civil enforcement provision, 29 U.S.C. § 1132(a)(1)(B). Aetna will have a full opportunity to object to the motion to amend before leave is granted to file the proposed amended complaint.

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<sup>7</sup> It is not necessary for Davison to argue the merits of her claim in her complaint. She need only set forth the facts, whether they be facts known to her or facts "likely [to] have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(3).

## CONCLUSION

For the reasons set forth above, final recommendation concerning Aetna's motion to dismiss is deferred pending Davison's possible amendment of her complaint. If Davison intends to file an amended complaint she shall file a motion to amend, accompanied by a proposed amended complaint, by May 31, 2013. If she does not move to amend her complaint by that date, then the recommendation to the district court will be based on her current pleadings and the recommendation will be that the court should dismiss the complaint.

## CERTIFICATE

Any objections to this report shall be filed in accordance with Federal Rule of Civil Procedure 72.

*So Ordered.*

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

May 13, 2013

DAVISON v. AETNA LIFE INSURANCE COMPANY

Assigned to: JUDGE GEORGE Z. SINGAL

Referred to: MAGISTRATE JUDGE MARGARET J.

KRAVCHUK

Demand: \$216,000

Case in other court: Maine Superior Court, York County,  
ALFSC-CV-12-00277

Cause: 28:1001 E.R.I.S.A.

Date Filed: 02/19/2013

Jury Demand: None

Nature of Suit: 791 Labor: E.R.I.S.A.

Jurisdiction: Federal Question

### **Plaintiff**

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