IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PIO SAGAPOLUTELE, et al.	:	
	:	
v.	:	Civil Action WMN-08-CV-01870
	:	
BERT BELLE/PETE ROZELLE NFL PLAYER RETIREMENT PLAN et al.	:	

MEMORANDUM

Before the Court are two motions filed by Defendants: (1) a motion to strike the jury demand of Plaintiffs; and, (2) a motion for a protective order. Paper No. 13. The issues have been fully briefed. Upon a review of the motions and the applicable case law, the Court determines that no hearing is necessary (Local Rule 105.6) and that Defendants' motions will be granted.

Plaintiffs are all former NFL players. Defendants are the Bert Belle/Pete Rozelle NFL Player Retirement Plan (the "Plan") and the NFL Supplemental Disability Plan (collectively the "Plans"). Each Plaintiff applied for benefits under one or both of Defendants' benefits plans and are now challenging the benefit determinations pursuant to the Employee Retirement Income and Security Act, 29 U.S.C. §§ 1001, et seq. ("ERISA"). Plaintiffs filed the Complaint in this Court on July 18, 2008, and Defendants answered on August 11, 2008. Paper Nos. 1, 3. On August 19, 2008, Plaintiffs notified Defendants that they sought electronic discovery and 30 hours of depositions. On August 25, 2008, Plaintiffs filed a demand for a jury trial. Paper No. 11. On August 26, 2008, Plaintiffs filed a statement with the Court

seeking 30 deposition hours addressing the "structure of the defendant pension plans" and "the expressed animus of the plans' trustees and appointing authorities[.]" Paper No. 12.

Plaintiffs also issued a Rule 30(b)(6) notice to the National Football League Management Council demanding documents and an October 6, 2008, deposition to occur in New York. On August 28, 2008, Plaintiffs erroneously issued out of the Southern District of New York a subpoena for documents and a deposition to occur in Washington, DC. The second corrected subpoena commanded the October, 13, 2008, appearance of a Rule 30(b)(6) representative of the National Football League Players Association ("NFLPA"). On September 8, 2008, Plaintiffs served on Defendants three sets of interrogatories and three sets of requests for production of documents. Defendants now ask that this Court issue a protective order limiting discovery to the administrative record underlying the benefit decisions at dispute in this case. See Defs.' Mot. at 5 (quoting Fed. Rule Civ. P. 26(c)(1) ("The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .")).

A participant or beneficiary in an ERISA plan may bring a court action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Where the plan document vests the plan administrator with discretionary authority to construe

the terms of the plan or determine eligibility for benefits, a plan's eligibility determination must be upheld by a court unless it is found to be an abuse of discretion. Metro Life Ins. Co. v. Glenn, 128 S. Ct. 2343, 2348 (2008) (quoting Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 111-15 (1989) (internal citations and quotations omitted)); see also Smith v. Cont'l Cas. Co., 369 F.3d 412, 417 (4th Cir. 2004) (finding abuse of discretion standard applies where "'discretion is conferred upon the [plan administrator] with respect to the exercise of power'") (quoting Firestone, 489 U.S. at 111). Under this standard, a court is limited to reviewing the evidence in the administrative record before the plan administrator when it made the decision under review. See, e.g., Booth v. Wal-Mart Store, Inc. Assocs. Health & Welfare Plan, 201 F.3d 335, 339 n.1 (4th Cir. 2000) (finding district court properly refused to consider evidence outside of administrative record when reviewing ERISA claim). In this case, the Plan confers broad discretion on the plan administrator (the "Retirement Board") to determine entitlement to benefits. Defs.' Ex. 1 at 27-31. Defendants' decisions, thus, must be reviewed by this Court under an "abuse of discretion" standard.

Plaintiffs admit that "review of the merits of a benefits decision is limited to the administrative record . . . ." Opp'n at 2 (emphasis in original). As Plaintiffs note, however, where a plan administrator with discretion is "operating under a conflict of interest such that its decision to award or deny

benefits impacts its own financial interests, . . . that conflict must be weighed as a factor in determining whether there is an abuse of discretion." Smith, 369 F.3d at 417. This does not mean that the court should deviate from the abuse of discretion standard, but instead, it should "'modif[y] that abuse of discretion standard according to a sliding scale. The more incentive for the administrator or fiduciary to benefit itself by a certain interpretation of benefit eligibility or other plan terms, the more objectively reasonable the administrator or fiduciary's decision must be and the more substantial evidence must support it.'" Smith, 369 F.3d at 418 (quoting Ellis v. Metro Life Ins. Co., 126 F.3d 228, 233 (4th Cir. 1997)).

Plaintiffs allege a conflict of interest exists in this case because the funding for benefits paid out under the Plan comes from the same capped pool of money as the salaries for active players. This combined cap, Plaintiffs argue, "creates a potential conflict of interest on the part of the NFLPA in its dual role as bargaining representative for its members (*i.e.*, the active players) and as fiduciary in administering the Plans for beneficiaries (*i.e.*, retired players)." Opp'n at 7. Plaintiffs believe that this conflict merits further explanation and request that this Court allow limited discovery into the matter.[1]

Plaintiffs argument fails, however, for multiple reasons. Here, the Retirement Board is composed of six members – three

[1] The Court believes that even if it were to grant limited discovery on the issue of conflict of interest, it would find Plaintiffs' discovery requests too broad.

appointed by the NFLPA and three appointed by the National Football League Management Council (NFLMC). The Plan at 27. The NFLMC is the "sole and exclusive bargaining representative of present and future employer member Clubs of the National Football League . . . ." Pls.' Ex. 1 at 1. Accordingly, there are equal representatives on the board for both the players and the employers. Because a majority vote by the Retirement Board is the only way to resolve benefit determinations, the Plan at 27-30, any alleged conflict that the NFLPA might have is not enough to confer a conflict of interest on the entire Retirement Board.[2]

Additionally, the Fourth Circuit has only recognized conflicts of interest in very narrow circumstances where a "plan is managed by its insurer, whose revenue comes from fixed premiums paid by the plan's sponsor." Coluccie v. Agfa Corp. Severance Pay Plan, 431 F.3d 170, 179 (4th Cir. 2005). In such a situation, the Fourth Circuit found that it could "assume that the insurer-administrator's profit motives unavoidably factored into its decisions to accept or deny plan members' claims . . . ." Id. Recently, in the case of Metropolitan Life Insurance Company v. Glenn, the United States Supreme Court came to a similar conclusion, finding that a conflict of interest arises

[2] Moreover, courts have repeatedly recognized that boards consisting of an equal number of union and employer representatives, like the Retirement Board, do not have a conflict of interest. Manny v. Cent. States Se. & Sw. Areas Pension & Health & Welfare Funds, 388 F.3d 241, 243 (7th Cir. 2004). See also Jones v. Laborers Health & Welfare Trust Fund, 906 F.2d 480, 481 (9th Cir. 1990) ("Because the Board of Trustees consists of both management and union employees, there is no conflict of interest to justify less deferential review.").

when an insurer or employer both fund plan benefits and administer claims. 128 S. Ct. 2343, 2348-50 (2008).[3]

The facts of the present case do not fit into this narrow scenario. The NFLPA neither funds benefits, nor decides claims. Moreover, this Court must note that every union is concerned about the availability of funds for salaries, and every employer and management has available only a limited pool of money to pay those salaries. This is the entire basis of collective bargaining. Thus, if this Court were to accept Plaintiffs' argument and extend the narrow circumstance described by the Fourth Circuit and in Glenn to this situation, a conflict of interest could well exist in every case involving a collective bargaining agreement. Accordingly, this Court must find that there is no cognizable conflict of interest in this case. Review of the case will be under the abuse of discretion standard and discovery must be limited to the administrative record.

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[3] In support of their argument for limited discovery, Plaintiffs also point to Johannssen v. District No. 1-Pacific Coast District, MEBA Pension Plan, 292 F.3d 159 (4th Cir. 2002). This case, however, is inapposite. Johannssen involved two unions that merged and subsequently dissolved after a bitter struggle. At issue were pension benefits claims by three union employees who allegedly were eligible for past service credits pursuant to a controversial 1992 amendment to a union staff pension plan. Id. at 163. The claims were denied by the administrator who refused to recognize the validity of the amendment on the ground that it was adopted by an improper body. Id. The case concerned the context where the plan administrator actively promoted the selfish interests of her employer through the administration of the claims at issue. Id. at 171. Unlike the facts of Johannssen, here there is no specific claim that any member of the Retirement Board was biased or had a conflict of interest. Additionally, unlike Johannssen, Plaintiffs have made no connection between their allegations of conflict and the specific disability claims or claimants at issue.

Defendants next request that this Court strike Plaintiffs' jury demand. The Fourth Circuit first considered the question of the right to a jury trial in an ERISA benefits action in Berry v. Ciba-Geigy Corporation, finding that "Congress' silence on that question has returned it to the common law of trusts . . . where, as noted, no jury trial obtains." 761 F.2d 1003, 1007 (4th Cir. 1985). Subsequent Fourth Circuit opinions have relied on Berry in continuing to deny plaintiffs a jury trial in ERISA actions. See Phelps v. C.T. Enterprises, Inc., 394 F.3d 213, 222 (4th Cir. 2005) ("'proceedings to determine rights under employee benefit plans are equitable in character and thus a matter for a judge, not a jury.' Putting such issues to the jury . . . would erode the deference to the ERISA administrator that the Act's 'abuse of discretion' standard require[s].") (quoting Berry, 761 F.2d at 1007). Plaintiffs' argue in response that the Berry decision was based on the belief that ERISA provides for equitable remedies only, and that three Supreme Court decisions issued since Berry - Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989), Ingersoll-Rand Co. V. McClendon, 498 U.S. 133 (1990), and Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204 (2002) - have undermined the basis for that opinion by finding room in ERISA for legal remedies. Pls.' Opp'n at 21-26.

This Court does not necessarily agree with Plaintiffs' interpretation of these three Supreme Court cases. An analysis of these holdings, however, is unnecessary here because the Fourth Circuit, since the issuance of Firestone, Ingersoll-Rand,

and Great-West, has clearly upheld its decision in Berry that an ERISA action for benefits is to be resolved by the court, not a jury. See, e.g., Varghese v. Honeywell Int'l, Inc., 424 F.3d 411, 415 n.5 (4th Cir. 2005) ("[U]nder ERISA a claimant may not insist upon a jury trial.") (internal citations omitted); Phelps, 394 F.3d at 222 (citing Berry in its decision not to allow plaintiff a jury trial under ERISA). Additionally, the majority of district courts in the Fourth Circuit have rejected the view that ERISA provides a right to a jury trial. See, e.g., Dotson v. McLeod Health Short Term Disability Plan, No. 4:07-cv-151-RBH, 2007 WL 2688559, at *2 (D.S.C. Sept. 10, 2007) ("binding precedent in this Circuit mandates that jury trials are not available in ERISA actions"); Black v. Bissell Co., No. 3:03-CV-577-DCK, 2007 WL 2226018, at *4 (W.D.N.C. July 30, 2007) (noting that Berry remains good law); Termini v. Life Ins. Co. of North America, 474 F. Supp. 2d 775, 779 n.7 (E.D. Va. 2007) (noting that all circuit courts of appeal, except the District of Columbia Circuit, and the "overwhelming majority of district court decisions in the Fourth Circuit" have determined that a plaintiff is not entitled to a jury trial on ERISA claims and collecting cases).

Plaintiffs attempt to get around this well-established principle by asserting jury trial rights under the Seventh Amendment. With respect to jury demands in ERISA cases, district courts in the Fourth Circuit have concluded both that it is necessary for a court to conduct a Seventh Amendment analysis,

and that it is not. Compare Termini, 474 F. Supp. 2d at 777 ("Because ERISA clearly does not provide any right to a trial by jury, the court must conduct an analysis under the Seventh Amendment."); with Allison v. Continental Cas. Ins. Co., 953 F. Supp. 127, 129 (E.D. Va. 1996) ("[I]f a Seventh Amendment analysis were necessary, the Fourth Circuit would have performed one in Biggers [v. Wittek Indus., Inc., 4 F.3d 291 (4th Cir. 1993)], which came after Firestone. As such, by implication, the Fourth Circuit has reaffirmed the notion that jury trials are not permitted in ERISA cases."). Additionally, as noted above, the Fourth Circuit, without conducting an analysis under the Seventh Amendment, has concluded on numerous occasions that ERISA actions seeking recovery of plan benefits are not triable by a jury. See, e.g., Vhargese, supra; Phelps, supra.

Even under a Seventh Amendment analysis, however, this Court finds that Plaintiffs do not have a right to a jury trial. The Seventh Amendment right to a jury trial applies to legal actions involving the determination of legal, rather than equitable, rights and remedies. Chauffers, Teamsters & Helpers, Local No. 391 v. Terry, 494 U.S. 559, 565 (1990). "The right to a jury trial extends to causes of action created by Congress." Id. In determining whether a Seventh Amendment right to a jury trial exists, the court examines both (1) "the nature of the issues involved," to determine if they would have historically been brought in a court of law or a court of equity, and (2) "the remedy sought," to determine whether it is legal or equitable in

nature." Id. The second prong is the more important inquiry. Id.

In this case, Plaintiffs filed their claims under 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3) alleging that Defendants wrongfully denied benefits to them. Compl. ¶¶ 53, 58, 63. District courts in the Fourth Circuit have previously held that, under the Seventh Amendment, wrongful denial of benefits claims brought under 29 U.S.C. § 1132(a)(1)(B) are "suit[s] to recover what is due and owing under a benefits plan" and thus, "essentially present[] an action at law to recover a legal entitlement." Lamberty v. Premier Millwork and Lumber Co., Inc., 329 F. Supp. 2d 737, 745 (E.D. Va. 2004).[4] As presented here, the nature of this particular claim is legal, as it is similar to a breach of contract claim.

In their prayer for relief, however, Plaintiffs seek both equitable and legal relief. See Compl. ¶¶ 55, 60, 65 (seeking declaratory judgment regarding benefit decision and Defendants' responsibility to pay Plaintiffs, preliminary and permanent injunction, judgment awarding Plaintiffs retroactive pension credit and payments to place Plaintiffs in same position in which

[4] In the Lamberty case, the court held that an ERISA claimant had the right to a jury trial under the Seventh Amendment. 329 F. Supp. 2d at 745. This decision, though in opposition to the many district court cases in the Fourth Circuit that find no such right, is explained by the unusual nature of the remedies sought. In Lamberty, the plaintiff was seeking amounts due and owing from the denial of benefits in the past. Here, as in a more typical ERISA case, Plaintiffs seek instead a declaratory judgment so that they may receive future monetary awards under the Plans.

they would have been if Defendants had acted properly, and "such further monetary or equitable relief . . . as this Court may deem appropriate"). In particular, in their Complaint, Plaintiffs ask this Court to first declare as void Defendants' "refusal[] to award" certain benefits and that Defendants are obligated to pay Plaintiffs the benefits sought. Id. (emphasis added). Plaintiffs attempt to characterize this relief as legal. What they overlook, however, is the fact that they have no entitlement to the benefits unless and until a court exercises its equitable powers to declare Plaintiffs eligible beneficiaries of the plan and thus order Defendants, as fiduciaries, to pay benefits. Absent a favorable ruling on this issue, Plaintiffs have no claim for money damages. Accordingly, their claim for monetary relief is inextricably intertwined with equitable relief. Termini, 474 F. Supp. 2d at 778. The Court will strike Plaintiffs' demand for a jury trial.

For the reasons stated above, Defendants' motions will be granted. A separate order will issue.

/s/
William M. Nickerson
United States District Judge

Dated: October 22, 2008.