

IN THE UNITED STATES DISTRICT COURT FOR THE
 WESTERN DISTRICT OF MISSOURI
 SOUTHERN DIVISION

MICHAEL D. LEHAR,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 08-3271-CV-S-ODS
)	
ITT CORPORATION, et al.,)	
)	
Defendants.)	

ORDER AND OPINION GRANTING IN PART AND DENYING IN PART DEFENDANTS’
 MOTION TO DISMISS COUNT I OF THE SECOND AMENDED COMPLAINT

On July 1, 2009, the Court granted in part, denied in part, and deferred in part Defendants’ Motion to Dismiss. That Order also directed Plaintiff to file a Second Amended Complaint. Now pending is Defendants’ Motion to Dismiss Count I of the Second Amended Complaint, which contends Count I is identical to the previous version of Count I which the Court dismissed.

Defendants are only partially correct. Count I is the practically the same in both the First Amended Complaint and the Second Amended Complaint. However, the Court did not dismiss Count I in its entirety. The Court’s actual holding was as follows:

In Count I, Plaintiff alleges ITT breached its ERISA-imposed fiduciary duties and seeks (1) the premiums he paid after the UNUM Plan was canceled and (2) the benefits he would have received if ITT had provided the information he requested and had not withheld information about the plan’s status. ITT alleges this claim must be dismissed because the second category of relief is not available under ERISA (specifically, 29 U.S.C. § 1132). Plaintiff seems to agree, but contends this only affects the relief requested, not the claim’s viability.

The Court agrees that dismissal of Count I is not . . . appropriate because there is no suggestion the first category of relief is not viable. However, having been provided no contrary argument, the Court agrees with ITT that Plaintiff cannot recover the benefits he would have received under the UNUM Plan.

Consistent with the Court's holding, Plaintiff's claim for benefits is dismissed. The remainder of Count I remains pending.

IT IS SO ORDERED.

DATE: September 1, 2009

/s/ Ortrie D. Smith _____
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT