Orlandi v. Osborne et al Doc. 29

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Stacey Orlandi,

Plaintiff,

v.

Jonathan M. Osborne, et al.,

Defendants.

Case No. 3:20-cv-2237

MEMORANDUM OPINION
AND ORDER

I. INTRODUCTION

Plaintiff Stacey Orlandi has filed this action pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA"). Defendants Jonathan M. Osborne, Andeavor Executive Severance and Change in Control Plan, Andeavor LLC, Marathon Petroleum Corporation, and Marathon Petroleum Company LP (collectively, "Defendants"), now move for a protective order seeking to prevent Orlandi from conducting any discovery in this matter. (Doc. Nos. 23 & 23-1). In response, Orlandi filed a brief opposing Defendants' motion and moving to compel limited discovery. (Doc. Nos. 25 & 25-1). Defendants filed a reply brief and, in it, oppose Orlandi's motion to compel. (Doc. No. 26). Orlandi did not file a reply brief in support of her motion.

II. BACKGROUND

As Chief Executive Officer of Virent, Inc., a wholly owned subsidiary of Andeavor, Orlandi was a Participant in the Andeavor Executive Severance and Change in Control Plan. The objective of the Plan was "to reduce uncertainty to select executives of the Company and its Subsidiaries in

Dockets.Justia.com

the event of certain fundamental events involving the control or existence of the Company as well as to provide a benefit in the event of an executive's termination of employment under certain conditions that are beyond the executive's control." (Doc. No. 1-1 at 3).

Orlandi, as a Participant in the Plan, was "eligible to receive a Change in Control Benefit if, within the two-year period following a Change in Control, such Participant's employment with the Company or a Subsidiary is terminated by reason of: (i) involuntary termination other than for Cause or by reason of death, or (ii) voluntary termination by the Participant for Good Reason. The determination of whether a termination of employment shall be for Cause or Good Reason shall be made in the sole and absolute discretion of the [administrator]."[1] (*Id.* at 7). "Good Reason" existed when:

> (a) without Participant's express written consent, the assignment to Participant of any duties inconsistent with the employment of Participant immediately prior to the Change in Control, or a significant diminution of Participant's positions, duties, responsibilities and status with the Company from those immediately prior to a Change in Control or a diminution in Participant's titles or offices as in effect immediately prior to a Change in Control, or any removal of Participant from, or any failure to reelect Participant to, any of such positions;
>
> …
>
> (c) the failure by the Company to continue benefits, including but not limited to, 40l (k), pension, life insurance, and health plans, substantially equal in value, in the aggregate, to those in which Participant is participating or is eligible to participate at the time of the Change in Control except as otherwise required by the terms of such plans as in effect at the time of any Change in Control;
>
> (d) the failure by the Company to continue in effect any incentive plan or arrangement in which Participant is participating at the time of a Change in Control (or to substitute and continue other plans or arrangements providing the Participant

[1] The original language of the Plan named the "compensation Committee of the Board" as the Plan's administrator. (Doc. No. 25-2). Following the merger on October 1, 2018, Reed M. Zimmer replaced the Committee as the Plan Administrator. (Doc. No. 25-3). The Plan was again amended in January 2019, designating Defendant Jonathon M. Osborne as the Plan Administrator. (Doc. No. 25-4). This change was made following Osborne's appointment as MPC Director of Human Resources – Compensation and Benefits. Osborne was an employee of Marathon Petroleum Company LP, a subsidiary of MPC.

> with substantially similar benefits), except as otherwise required by the terms of such plans as in effect at the time of any Change in Control;
>
> …
>
> (f) any failure by the Company to obtain the assumption of this Agreement by any successor or assign of the Company[.]

(*Id.* at 5-6).

In the fall of 2018, Andeavor merged with Marathon Petroleum Company ("MPC"). In anticipation of the October 1, 2018 Closing Date, an Integration Announcement was distributed on September 24, 2018. This Announcement listed the positions Orlandi's colleagues and counterparts would hold following the merger, but Orlandi's name did not appear on that list. (Doc. No. 25-8).

Four days after the Integration Announcement, on September 28, 2018, MPC Human Resources Consultant Darren Black sent Orlandi a letter stating her employment would continue at her current salary and position for an "evaluation period" of up to twelve months. (Doc. No. 25-7). It then advised,

> At the conclusion of this evaluation, if you are offered a new role within the organization or offered to continue in your current role, you will be requested at that time, in consideration for such offer, to waive your rights to payments or benefits under the Andeavor Executive Severance and Change in Control Plan ("Plan"), and your rights to accelerated vesting of Andeavor equity-based awards, in the event of a resignation by you due to "Good Reason." MPC will continue to recognize your eligibility for change in control severance benefits under the Plan and Andeavor equity-based awards (as converted to MPC equity-based awards) for involuntary termination by MPC without "Cause". Also, during this evaluation period, your rights under the Plan and outstanding Andeavor equity-based awards will continue in effect.

(*Id.*).

Then, on September 30, 2018, MPC and Andeavor issued the Group Separation Program Disclosure Statement, which stated Orlandi, as "SVP, Virent CEO," was an "employee selected for termination, but will remain employed for a period following October 1, 2018 to assist transition and other efforts." (Doc. No. 25-11).

On receipt of this information, Orlandi requested to exercise the "Good Reason" provision of the Plan. Black "looked into" Orlandi's request and cautioned that he did not believe she would qualify for benefits because she had not "experienced a 'significant diminution' in [her] position, duties, responsibilities and status with the Company or a diminution in [her] title or office." (Doc. No. 25-9 at 2). In response, Orlandi asserted the "now temporary nature of [her] position and the change in the level of [her] reporting structure among other things" qualified as "Good Reason" for her resignation. (*Id.* at 1). She also suggested the contents of the September 28, 2018 transition letter triggered other sections of the "Good Reason" clause, specifically citing the condition requiring her to waive certain rights under the Plan to continue to work for the company following the "evaluation period." (*Id.*).

Because Orlandi concluded the twelve-month "evaluation period" would "effectively put[her] career on hold while Marathon decides the future of Virent and [her] employment," she countered with a proposal to work a twelve-week transition period instead. (Doc. No. 25-9). Black rejected this proposal because MPC wanted her "to continue in the role without the constraints of a defined transition," and because her "role [was] not considered to be temporary." (Doc. No. 25-10).

Rather than accept MPC's "evaluation period" employment offer, Orlandi resigned and submitted her claim for the Plan's Change of Control benefits. (Doc. No. 25-5, 25-6, & 25-12). She asserted her resignation was "a voluntary termination of employment for Good Reason," explaining:

> "Good Reason" exists not only because there is a significant diminution of my position, duties, responsibilities and status (the temporary nature of my position, the change in level of my reporting structure) and title, but also because my transition letter (attached) provides that I will have to give up the "Good Reason" trigger for change in control benefits if the company decides to continue my employment after the contemplated evaluation period.

(Doc. No. 25-6 at 1). In short, Orlandi argued she had resigned because of circumstances contemplated by clauses (a), (c), (d), and (f) of the Plan's "Good Reason" definition. (Doc. No. 25-12).

In his capacity as MPC's Director of Compensation and Benefits, Defendant Jonathon M. Osborne was the Plan's administrator at the time Orlandi filed her claim. (Doc. No. 25-4; *see also* Doc. No. 25-15). Osborne exercised his "sole and absolute discretion" as Plan administrator to deny Orlandi's claim to benefits. (Doc. No. 25-13). In doing so, Osborne rejected each of Orlandi's arguments based on his interpretation of the language of the Plan and the evidence before him. That evidence included the communications between Orlandi and Black, the MPC/Andeavor Integration Announcement, and the September 30, 2018 MPC/AndeavorGroup Separation Program Disclosure Statement.[2] (*Id.* at 2-3).

With the assistance of counsel, Orlandi appealed Osborne's decision. (Doc. No. 25-14). This appeal was entrusted to Osborne to "conduct a full and fair review." (Doc. No. 25-2 at 13). Although Osborne declared to give no deference to his previous decision, he again denied her claim to benefits on appeal. (Doc. No. 25-17).

Following his denial, Orlandi filed this civil action under ERISA seeking review of the lawfulness of Osborne's decision to deny benefits. (Doc. No. 1). In the Complaint, she alleged "Osborne was not an impartial decisionmaker and had a conflict of interest in deciding Orlandi's claim and appeal" because of his employment with MPC. (*Id.* at 10). Because of this procedural challenge, Orlandi alerted that she would be requesting discovery. (*Id.*).

Orlandi sought such discovery, serving Defendants with written discovery requests and notifying Defendants of her intent to take Osborne's deposition. (Doc. Nos. 23-2 & 23-3). She advised, "The subject matter of the oral deposition will be Mr. Osborne's bias and conflict of interest as the Plan Administrator for the Andeavor Executive Severance and Change in Control

[2] In his decision, Osborne refers to "subsequent versions" of the Group Separation Program Disclosure Statement. (Doc. No. 25-13 at 3). But he does not name these additional versions in the list of documents reviewed. (*Id.* at 2-3).

Plan." (Doc. No. 23-3). The written discovery requests consisted of nine requests for document production and eleven interrogatories related to the same subject matter. (Doc. No. 23-2).

On receipt of Orlandi's discovery requests, Defendants moved for a protective order seeking to prevent her from conducting discovery in this ERISA action. (Doc. No. 23). In turn, Orlandi moved to compel such limited discovery. (Doc. No. 25).

III. DISCUSSION

When adjudicating an ERISA benefit action, the district court's review is generally limited to consideration of "the evidentiary materials contained in the administrative record." *Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 430 (6th Cir. 2006) (quoting *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 619 (6th Cir. 1998) (Gilman, J., concurring in the result and writing for the majority of the panel)). But "the district court may consider evidence outside of the administrative record . . . if that evidence is offered in support of a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part." *Id.* (emphasis added). "[A]ny prehearing discovery at the district court level should be limited to such procedural challenges." *Id.*

Here, Orlandi seeks "limited discovery on Jonathan Osborne's inherent conflict of interest." (Doc. No. 25-1 at 1). Defendants contend no inherent conflict exists and argue that, even if it does, Orlandi has failed to show limited discovery is warranted.

A. Existence of Inherent Conflict of Interest

The Supreme Court has held that an inherent conflict of interest exists when "the entity that administers the plan, such as an employer or an insurance company, both determines whether an employee is eligible for benefits and pays benefits out of its own pocket." *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 108 (2008). In these cases, "the employer has an interest . . . conflicting with that of the beneficiaries" because "[t]he employer's fiduciary interest may counsel in favor of

granting a borderline claim while its immediate financial interest counsels to the contrary." *Id.* at 112 (internal quotation marks and further citation omitted). Still, the Court acknowledged that such a situation occurs in "the lion's share of ERISA plan claims denials" as ERISA "specifically allow[s] employers to administer their own plans." *Id.* at 113, 116 (citing 29 U.S.C. § 1108(c)(3)).

Here, the Plan administrator was effectively MPC because Osborne denied Orlandi's claim in his capacity as the Director of Compensation and Benefits of MPC. (*See* Doc. No. 25-4). The Plan payor was Andeavor, a wholly owned subsidiary of MPC. (Doc. No. 16 at 2). Because MPC and Andeavor share a parent-subsidiary relationship, Orlandi argues they should be treated as the same entity for purposes of finding a *Glenn* inherent conflict of interest. Defendants counter that this parent-subsidiary relationship does not create an inherent conflict under *Glenn* because the two are not actually the same entity. In support, Defendants cite general rules of parent-subsidiary liability and contend this situation is similar to one in which a plan payor appoints a third-party administrator rather than one in which the same entity both administers the claim and pays the benefits. I disagree.

Drawing on the reasoning of *Glenn*, I conclude the determination of whether a conflict of interest exists depends not on labels but on mechanics: Who would suffer the financial loss if benefits were paid? Here, Andeavor would "pay" the benefits. But because Andeavor is a wholly owned subsidiary of MPC, the ultimate "pocket" from which the benefits would be paid belongs to MPC. Therefore, as a practical matter, MPC and Andeavor should be considered the "same entity" for this conflict-of-interest analysis. Because MPC (through Osborne) "acts not only as the plan administrator—deciding whether to grant or deny claims—but its subsidiary… funds the reserves from which claims are paid," an inherent conflict of interest exists. *Olah v. Unum Life Ins. Co. of Am.*, 556 F. Supp. 3d 822, 826 (E.D. Tenn. 2020) (*overruled on other grounds by* No. 1:19-cv-96, 2022 WL 2452376 (E.D. Tenn. Mar. 8, 2022)).

B. Discovery when Inherent Conflict of Interest Exists

An inherent conflict of interest is "but one factor among many that a reviewing judge must take into account" when "review[ing] the lawfulness of benefit denials." 554 U.S. at 116-17. When weighing this factor,

> The conflict of interest … should prove more important (perhaps of great importance) where circumstances suggest a higher likelihood that it affected the benefits decision, including, but not limited to, cases where an insurance company administrator has a history of biased claims administration. … It should prove less important (perhaps to the vanishing point) where the administrator has taken active steps to reduce potential bias and to promote accuracy, for example, by walling off claims administrators from those interested in firm finances, or by imposing management checks that penalize inaccurate decisionmaking irrespective of whom the inaccuracy benefits.

Id. at 117 (citations omitted).

"Discovery may be appropriate to determine the weight to accord to a conflict of interest …, but the district court retains discretion to decide when to allow such discovery." *Bell v. Ameritech Sickness & Accident Disability Benefit Plan*, 399 F. App'x 991, 998 (6th Cir. 2010) (citing *Calvert v. Firstar Finance, Inc.*, 409 F.3d 286, 293 n. 2 (6th Cir. 2005) and *Johnson v. Conn. Gen. Life Ins. Co.*, 324 F. App'x 459, 467 (6th Cir. 2009)). The circumstances under which discovery is appropriate in the face of an inherent conflict of interest is a matter of some debate.

As Defendants acknowledge, there is a split among district courts within the Sixth Circuit on this issue. (Doc. No. 23-1 at 11-12 (citing cases)). Without binding precedent from the Sixth Circuit, district courts have held: (1) the existence of an inherent conflict alone is sufficient to permit limited discovery; or (2) a threshold evidentiary showing of bias beyond the inherent conflict is required to permit limited discovery. *See Olah*, 556 F. Supp. 3d at 826-28 (discussing the two approaches); *Alekna v. AT&T Service, Inc.*, No. 5:17-cv-400, 2018 WL 1251767, at *1- *2 (N.D. Ohio Mar. 12, 2018) (same). Defendants urge me to follow my district court colleagues who have required an additional evidentiary showing of bias before granting limited discovery. In support,

Defendants cite the Circuit's unpublished decisions in *Guest-Marcotte v. Life Insurance Co. of North America*, 730 F. App'x 292 (6th Cir. 2018) and *Collins v. Unum Life Insurance Co. of America*, 682 F. App'x 381, 389 (6th Cir. 2017). (Doc. No. 23-1 at 12).

Defendants' reliance on *Guest-Marcotte* is misplaced. *Guest-Marcotte* correctly stated the Sixth Circuit's general rule for ERISA discovery: "To be entitled to such discovery, an ERISA claimant must first 'provide sufficient evidence of bias—or of any procedural irregularity—to justify prehearing discovery. ... [A] mere allegation of bias is insufficient to throw open the doors of discovery in an ERISA case.'" 730 F. App'x at 304 (quoting *Likas v. Life Ins. Co. of N. Am.*, 222 F. App'x 481, 486 (6th Cir. 2007)). But contrary to Defendants' suggestion, *Guest-Marcotte* did not hold an inherent conflict of interest was "a mere allegation of bias."

Importantly, *Guest-Marcotte* did not involve an inherent conflict of interest. Instead, in *Guest-Marcotte*, the administrator "lack[ed] the incentive to deny benefits" because the Plan was not funded by the administrator but "through the general assets of [the employer] and identifie[d] itself as self-funded." *Id.* at 304. Therefore, by concluding there was no conflict of interest present in that case, *Guest-Marcotte* did not conclude the existence of an inherent conflict of interest would not be "evidence of bias" sufficient "to justify prehearing discovery."

Unlike *Guest-Marcotte*, *Collins* did involve an inherent conflict of interest. 682 F. App'x at 387. There, the court articulated the following standard:

> [I]f the claimant offers evidence "in support of a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part," discovery may be warranted. *Johnson v. Conn. Gen. Life Ins. Co.*, 324 Fed.Appx. 459, 466 (6th Cir. 2009) (citation omitted). Though we have identified a conflict of interest as a type of bias that may warrant additional discovery, "[t]hat does not mean, however, that discovery will automatically be available any time the defendant is both the administrator and the payor under an ERISA plan." *Id.* at 467. So, the claimant must put forth a factual foundation to establish that he has done more than merely allege bias. *See Pearce v. Chrysler Grp., LLC Pension Plan*, 615 Fed.Appx. 342, 350 (6th Cir. 2015).

Id. at 389. The court then concluded that, because the claimant "ha[d] not set forth evidence establishing more than a mere allegation of bias based on the inherent conflict of interest[,] . . . the district court did not abuse its discretion in denying additional discovery." *Id.* at 389.

With this, *Collins* seems to suggest an inherent conflict of interest is not evidence of bias, but "a mere allegation of bias." Even if *Collins* did not entirely discount the evidentiary value of the existence of inherent conflict of interest, it did hold additional evidence was required to justify discovery. That is, *Collins* "impose[d] a threshold evidentiary showing of bias" in inherent conflict of interest cases just as *Johnson* declined to do years earlier because of "the Supreme Court's admonition in *Glenn* discouraging the creation of special procedural or evidentiary rules for evaluating administrator/payor conflicts of interest." *Johnson*, 324 F. App'x at 466; *see Glenn*, 554 U.S. at 116 ("Neither do we believe it necessary or desirable for courts to create special burden-of-proof rules, or other special procedural or evidentiary rules, focused narrowly upon the evaluator/payor conflict.").

Though *Collins* cited *Johnson* in its statement of the applicable law, *Collins* does not acknowledge that its holding conflicts with *Johnson*. In turn, *Collins* makes no attempt to explain how imposing a mandatory threshold showing regarding the evaluator/payor conflict complies with *Glenn*. Without such an explanation, I cannot conclude the reasoning in *Collins* is persuasive, and therefore decline to accord this unpublished opinion precedential value. *See In re Braddy*, 195 B.R. 365, 370-71 (E.D. Mich. 1996) ("A review of the Sixth Circuit cases … suggests that although the Court of Appeals does recognize that its unpublished decisions are not binding precedent in the same sense as published decisions, the court does cite an unpublished decision when there is no published decision on point and the reasoning of the unpublished decision is found persuasive.").

Rather than apply *Collins*, I defer to *Johnson*, which treated an inherent conflict in the same manner as any other ERISA procedural challenge and held, "[d]istrict courts are well-equipped to

evaluate and determine whether and to what extent limited discovery is appropriate in furtherance of a colorable procedural challenge under *Wilkins*." *Johnson*, 324 F. App'x at 467. I acknowledge "that discovery will [not] automatically be available any time the defendant is both the administrator and the payor under an ERISA plan." *Id.* But I conclude permitting limited discovery is necessary in this case to allow me to meaningfully determine the weight to accord the conflict of interest in the course of my ultimate review of Osborne's decision.

Here, Osborne was charged with "sole and absolute discretion" of the decision to determine not just whether his employer's wholly owned subsidiary had to pay Orlandi a large sum of money but whether it had to do so because his employer had significantly diminished Orlandi's position or failed to continue benefits Orlandi had received prior to the merger. Making this decision only more difficult was the evidence before him showing his employer's desire not only to deny Orlandi the benefits she sought, but also to continue Orlandi's employment on its terms. This is not to say it is a foregone conclusion that Osborne could not have remained objective when making this decision or when subsequently reviewing his own decision on appeal. But I "would have a better feel for the weight to accord this conflict of interest if [Orlandi is given the opportunity to] explore[ ] the issue through discovery." *Calvert*, 409 F.3d at 293 n.2.

The scope of the discovery proposed is limited to Orlandi's procedural challenge, seeking information about the conflict of interest and any bias that may have resulted from that conflict. (Doc. Nos. 23-2 & 23-3). Defendants state no specific objection to any of these requests. Without any specific objection, I grant Orlandi's motion and order Defendants to provide answers to her eleven interrogatories and documents responsive to her nine requests for production. (Doc. No. 23-2). Further, I grant her the opportunity to conduct Osborne's "short deposition" on only those topics related to the conflict of interest and his alleged bias. (Doc. No. 23-3; Doc. No. 25-1 at 14).

V. Conclusion

For the foregoing reason, I deny Defendants' motion for a protective order and grant Orlandi's motion to compel.

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge