

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ERIC YOST, individually and on  
behalf of a class of similarly situated  
individuals,

Plaintiff,

v.

ANTHEM LIFE INSURANCE  
COMPANY

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

3:16-CV-00079  
(JUDGE MARIANI)

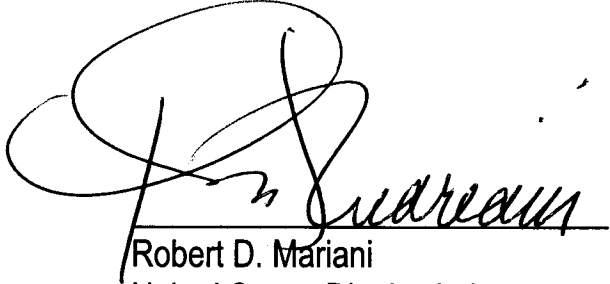
ORDER

AND NOW, THIS 27<sup>th</sup> DAY OF OCTOBER, 2017, upon consideration of  
Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint (Doc. 30), **IT IS HEREBY  
ORDERED THAT** the Defendant’s Motion is **GRANTED IN PART AND DENIED IN PART**  
as follows:

1. As stated in the Memorandum Opinion, the Court finds Count I (Rule of Decision) is not properly pled as an independent claim for relief, but contains allegations integral to Count II. The Court therefore construes the allegations in Count I (Doc. 30 ¶¶ 72–76) as incorporated into Count II (Declaratory Relief) of the Amended Complaint pursuant to Fed. R. Civ. P. 8(f) (“Pleadings must be construed so as to do justice”).
2. As stated in the Memorandum Opinion, the Court finds Count VI (Relief Demanded) to be a statement of requested relief. The title “Count VI” is therefore **STRICKEN**

from the Amended Complaint. (Doc. 30 at 27). The allegations in Count VI will be construed as a prayer for relief.

3. As stated in the Memorandum Opinion, subparagraphs (7)-(13) under Relief Demanded for Count III of the Amended Complaint (Doc. 30 at 29–30), as well as all references to “mandamus” under the Relief Demanded section of the Amended Complaint (Doc. 30 at 29, 31, 33), are **STRICKEN**.
4. Count IV (Breach of Fiduciary Duty – Misrepresentation) of the Amended Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.
5. Defendant’s Motion to Dismiss Count II (Declaratory Relief), Count III (Violation of Employee Welfare Benefit Plan and Policy), and Count V (Breach of Fiduciary Duty – Duty of Loyalty) is **DENIED**.



Robert D. Mariani  
United States District Judge