IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL C. JONES,	:	CIVIL ACTION
Plaintiff,	:	NO. 01-2476
v.	:	
AETNA LIFE INSURANCE COMPANY and JANNEY MONTGOMERY SCOTT, INC.,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J. August 14, 2002

Defendants, Aetna Life Insurance Company ("Aetna") and Janney Montgomery Scott, Inc. ("Janney") have filed separate motions for summary judgment. Daniel C. Jones ("Plaintiff" or "Jones") asserts violations of the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. Count I of Plaintiff's Complaint asserts a violation of Section 1132(a)(1)(B), which allows a beneficiary to sue for benefits due him under the terms of any ERISA governed benefits plan. Count II of Plaintiff's Complaint asserts a violation of ERISA's reporting and disclosure requirements. For the reasons stated below, both Aetna and Janney's motions for summary judgment are GRANTED.

I. FACTS

Plaintiff is a former employee of Janney. On May 21, 1999, while he was still employed at Janney, Plaintiff was involved in a one vehicle automobile accident in Pennsylvania, unrelated to his employment at Janney. As a result of this accident, Plaintiff suffered serious spinal injury, which rendered him a paraplegic. Police investigation detected an odor of alcohol on the Plaintiff's breath at the scene of the accident. Toxicology tests administered at the hospital immediately after the accident revealed that Plaintiff's blood alcohol level was .157%.[1]

Following this accident, Plaintiff made claims through his employer provided insurance. Plaintiff believes he is entitled to benefits through an Accidental Death and Dismemberment policy provided by Janney to participating employees. The Accidental Death and Dismemberment coverage was part of a basic life insurance policy which had been issued to Janney by Aetna (hereinafter referred to as the "Plan"). Aetna, who maintained sole authority to determine whether Janney employees were entitled to benefits, denied Plaintiff's claim based upon a limitation it asserted existed in the policy, which excluded coverage for accidents resulting from the use of

1. Under Pennsylvania law, the legal limit of blood alcohol content while operating a vehicle is 0.10%. See 75 Pa. Cons. Stat. Ann. § 3731 (West 1996).

alcohol. Aetna's denial of benefits prompted Plaintiff to file the instant suit.

By way of background, Janney purchased the subject Group Life and Accident and Health Insurance Policy from Aetna through a request for proposals selection process. Aetna sent its proposal to Janney on or about September 24, 1998. Aetna's proposal was a fifteen-page document outlining, in bullet point fashion, the group plan for Life Insurance and Accidental Death and Dismemberment coverage. On page seven of this proposal, Aetna stated that no benefits would be payable for a loss caused or contributed by use of alcohol.

Janney accepted Aetna's proposal, and the policy went into effect on November 1, 1998, approximately six months before Plaintiff's automobile accident. For the next year and a half to two years, Janney and Aetna worked toward finalizing the Plan documents. It is not clear why the Defendants were unable to finalize the Plan documents in a more timely fashion. However, it appears that Defendants were still negotiating the terms of the policy and that Aetna employees in charge of the Janney account were overworked.

During this negotiation process, before the Plan documents were finalized, Plaintiff suffered the spinal cord injuries as a result of his automobile accident. The accident prompted Plaintiff to make an oral request to Janney for a copy

of the insurance policies which would describe any benefits to which he was entitled. Because there was no finalized version of the Plan documents at the time of Plaintiff's request, Janney sent Plaintiff a draft copy of the insurance booklet. Each page of the booklet had the word "sample" printed or watermarked diagonally across the page. In the cover letter sent along with the draft booklet, Aetna stated that there may be some changes before the final printing and that all benefits would be paid based upon the final approved version. The draft booklet sent to Plaintiff is similar in form and content to the proposal Aetna sent to Janney in September 1998, in response to Janney's request for proposals and states that no benefits will be paid for a loss caused or contributed to by use of alcohol.

Plan documents were not finalized by Defendants until sometime between the summer of 2000 and October 2000, approximately one and a half to two years after the effective date of the policy, and more than six months after Plaintiff was denied benefits pursuant to the alcohol exclusion contained in a draft version of the Accidental Death and Dismemberment Policy. The finalized Plan documents are similar in form and content to the proposal Aetna submitted in September 1998, in response to Janney's request for proposals and to all prior draft documents maintained by Defendants. Most relevant to the instant litigation, the finalized Plan documents stated that no benefits

will be paid for a loss caused or contributed to by use of alcohol.

Plaintiff commenced the instant suit on May 18, 2001, alleging that Defendants improperly denied Accidental Death and Dismemberment benefits to him in violation of Section 1132(a)(1)(B) of ERISA, which allows a beneficiary of an ERISA-governed benefits plan to sue for "benefits due to him under the terms of the plan." Plaintiff also seeks statutory penalties pursuant to Section 1132(c)(1) of ERISA, claiming that Defendants failed to provide him with requested information in violation of ERISA's reporting and disclosure requirements.

II. STANDARD

A motion for summary judgment shall be granted if the Court determines "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In addition, "[i]nferences to be drawn from the underlying facts contained in the evidential sources . . . must be viewed in the light most favorable to the party opposing the motion. The non-movant's allegations must be taken as true and, when these assertions conflict with those of the movant, the former must receive the benefit of the doubt." Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, if the nonmovant's evidence is merely colorable, or is not significantly probative, or just

raises some metaphysical doubt as to the material facts, summary judgment may be granted. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1355, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986).

III. DISCUSSION

A. Denial of Benefits

Defendant Aetna moves for summary judgment on Plaintiff's claim for denial of benefits under 29 U.S.C. § 1132(a)(1)(B). Co-Defendant Janney maintains, and all parties appear to agree, that the decision to deny benefits to Plaintiff was solely in the discretion of Aetna, and therefore, Janney is not liable under Section 1132(a)(1)(B) of ERISA.

In Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S. Ct. 948, 956-57, 103 L. Ed. 2d 80 (1989), the Supreme Court held that:

> a denial of benefits challenged under §1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.

When a benefit plan gives an administrator discretionary authority to determine eligibility for benefits, application of a deferential arbitrary and capricious or abuse of discretion

standard of review is appropriate. See Stoetzner v. United States Steel Corp., 897 F.2d 115, 119 (3d Cir. 1990).

The Plan before the Court does contain language giving Aetna the discretion to make eligibility determinations. Specifically, the Plan provides that Aetna is the ERISA Claim Fiduciary "with complete authority to review all denied claims for benefits under this policy." This authority includes the "discretionary authority to: determine whether and to what extent employees and beneficiaries are entitled to benefits; and construe any disputed or doubtful terms of the policy." The Plan further provides that "Aetna shall be deemed to have properly exercised such authority unless Aetna abuses its discretion by acting arbitrarily and capriciously."

Despite this direct language granting discretion to Aetna and indicating that application of a deferential arbitrary and capricious standard of review is appropriate, Plaintiff argues that a heightened form of arbitrary and capricious standard of review is proper in this case because Aetna both funds the Plan and makes benefits determinations and thus, a conflict of interest is present. Under applicable Third Circuit case law, heightened scrutiny is required when an insurance company both funds a plan and interprets the plan and makes plan benefit determinations. Pinto v. Reliance Std. Life Ins. Co., 214 F.3d 377, 387 (3d Cir. 2000). When this conflict is present,

a court is "to apply the arbitrary and capricious standard, and integrate conflicts as factors in applying that standard, approximately calibrating the intensity of [the Court's] review to the intensity of the conflict." Id. at 393. This sliding scale approach requires a district court "to consider the nature and degree of apparent conflicts with a view to shaping [the Court's] arbitrary and capricious review of the benefits determinations of discretionary decisionmakers." Id.

Under an arbitrary and capricious standard, "an administrator's decision will only be overturned if it is without reason, unsupported by substantial evidence or erroneous as a matter of law." Pinto, 214 F.3d at 387 (internal quotations omitted). If I were to apply this extremely deferential arbitrary and capricious review, I would agree with Aetna's decision to deny Plaintiff benefits because there is credible evidence which was relied upon by Aetna to support its decision. First, Aetna points to the language in the Plan documents which unequivocally state:

> Limitations — This coverage is only for losses caused by accidents. No benefits are payable for a loss caused or contributed to by:
> . . .
> Use of alcohol, intoxicants, or drugs, except as prescribed by a physician. An accident in which the blood alcohol level of the operator of the motor vehicle meets or exceeds the level at which intoxication would be presumed under the law of the state where the

> accident occurred shall be deemed to be caused by the use of alcohol.

Next, Aetna relies on its analysis of the police report, the toxicology report, the operative report from the hospital and the medical records relating to Plaintiff's accident and injury. The police report indicated the smell of alcohol on Plaintiff's breath and the likelihood of alcohol being the contributing cause of the accident. The toxicology reports evidences that Plaintiff's blood alcohol content was .157% at the time of the accident, a level in excess of what Pennsylvania presumes an adult to be driving under the influence of alcohol to a degree which renders the person incapable of safe driving. Therefore, given that alcohol was a contributing factor in Plaintiff's accident and the Plan did not provide benefits for such accidents, Aetna's decision to deny benefits was not "without reason, unsupported by substantial evidence or erroneous as a matter of law."

However, applying a heightened arbitrary and capricious review, my review is deferential, but not absolutely deferential. "Therefore, [I] look not only at the result-–whether it is supported by reason-–but at the process by which the result was achieved." Pinto, 214 F.3d at 393. In doing so, Plaintiff raises one problem: at the time that Plaintiff sustained his spinal injury which resulted in paraplegia on May 21, 1999, there was no official or finalized written document that described the

parameters of the Accidental Death and Dismemberment coverage to which Plaintiff was entitled. Plaintiff relies on the information he received from Janney in response to his request for Plan documents after the accident to support this contention. By letter dated August 10, 1999, Janney replied to Plaintiff's request for Plan documents by sending him a benefit booklet and a cover letter which advised him that:

> Since our booklet is still under review, I have enclosed a copy of the drafted version of the booklet. There may be some changes before the final printing. **Please note that all benefits will be payable based upon the final approved version.** When the final version becomes available, we will forward a copy to you.

(Emphasis in the original). Discovery in this litigation further revealed that, although the Accidental Death and Dismemberment Policy went into effect on November 1, 1998, Aetna and Janney had not yet come to an agreement on every issue of the group insurance Aetna was providing to Janney employees and continued negotiating the terms of the insurance contract. Although Aetna printed several drafts of the Plan documents, it was not until sometime after the summer of 2000 and possibly as late as October 2000, that Aetna printed the finalized version of the Plan booklets for distribution to Janney employees. Neither Aetna nor Janney explain why the Plan documents took so long to finalize and distribute.

At first glance, this scenario presents a significant potential for abuse in analyzing benefit claims. As long as Aetna stated that the Plan documents were not in final form and that a final determination of benefits would be based upon the final approved version of the policy, Aetna was free to change the terms of the policy to suit a position that the claimant was not entitled to benefits.

However, upon closer examination, the delay in finalizing the Plan documents appears to be an administrative snafu and there is little evidence of any suspicious events which would raise the likelihood of self-dealing on Aetna's part. The evidence of bias is lacking predominantly because Aetna consistently maintained that the accidents caused or contributed to by the use of alcohol, as in Plaintiff's case, would not be covered under the Plan. The alcohol exclusion is evidenced as early as September 24, 1998, prior to Plaintiff's accident, in Aetna's submission in response to Janney's request for proposals. In addition, every draft, as well as the final version of the Plan documents, contains the alcohol exclusion as a limitation on coverage. Aetna's internal computer files also record the Janney policy as having an alcohol exclusion. Although Plaintiff complains that draft versions of the Plan documents existed because Defendants were still negotiating substantive issues with respect to coverage, he has presented no evidence that the

alcohol exclusion was one of the provisions under negotiation or that the alcohol exclusion was something that Janney or Aetna had considered eliminating from the Plan. It is also worth noting that Trans-General Life Insurance Company of New York provided insurance benefits to Janney employees immediately before the Aetna policy went into effect. Trans-General's coverage explicitly excluded accidental bodily injuries caused or contributed to by the voluntary use or consumption of any intoxicant or narcotic, unless used or consumed in accordance with the directions of a physician. While Trans-General's policy does not evidence that Aetna intended to exclude accidents resulting from consumption of alcohol, it does show that Plaintiff was on notice that Janney did not provide its employees with this type of coverage. It further evidences that alcohol exclusions appear to be standard in insurance policies, a fact which is supported by the deposition testimony of Linda Mann, an Aetna account representative and the affidavit of James P. Robertson, Aetna's Life, Accidental Death and Dismemberment, and Long-Term Care Product Manager.

Finally, Aetna consistently denied Plaintiff's claim in line with the alcohol exclusion as it was explicitly written in the documents described above. On September 1, 1999, Desiree Hicks, an Aetna employee, investigated Plaintiff's claim for benefits. Ms. Hicks' report stated that Plaintiff was injured in

an alcohol related accident and that Janney's policy contained an alcohol exclusion clause. On October 21, 1999, Aetna sent Plaintiff a letter denying Accidental Death and Dismemberment benefits to him. This letter stated that Plaintiff's coverage specifically excluded benefits for a loss caused or contributed to by the use of alcohol, intoxicants, or drugs, except as prescribed by a physician.

Taking Aetna's conflict of interest into consideration along with the procedural anomalies described above, I find myself in the middle of the arbitrary and capricious range, and I examine the facts before Aetna with a moderate degree of skepticism.

Plaintiff relies heavily on general principles of insurance contract interpretation, arguing that the alcohol exclusion did not exist at the time he was injured because that alcohol exclusion was not written in a final, official version until after Plaintiff was injured and therefore, cannot form the basis for Aetna's decision to deny him benefits. In support of this contention, Plaintiff asserts that "exclusions from an insurance policy must be clearly worded and conspicuously displayed." Township of Center, Butler County, Pa. v. First Mercury Syndicate, Inc., 117 F.3d 115, 117 (3d Cir. 1997); Pacific Indem. Co. v. Linn, 766 F.2d 754, 760-761 (3d Cir. 1985). However, each document for which Plaintiff complains was only in

draft form, does clearly word and conspicuously display the alcohol exclusion on which Aetna based its decision to deny Plaintiff benefits. The cases cited by Plaintiff are inapposite to his argument that policy provisions which limit coverage are not effective against a policyholder when in draft form.

The ultimate question is whether a factfinder could conclude that Aetna's decision to deny Plaintiff benefits based upon an alcohol exclusion that existed only in draft form was the result of self-dealing instead of the result of a trustee carefully exercising its fiduciary duties. Because the alcohol exclusion was always part of the Plan, most significantly evidenced in the written documents in existence prior to Plaintiff's accident, and the undisputed fact that Plaintiff's accident was a result of his intoxication,[2] Aetna's decision to deny him benefits was not "without reason, unsupported by substantial evidence or erroneous as a matter of law."

There is no support for the proposition Plaintiff puts forth that exclusions contained in ERISA plan documents in draft form are not part of the policy. Neither party disputes that the benefit plan was in effect, providing Accidental Death and Dismemberment coverage to Plaintiff at the time of his accident.

---

2. Plaintiff points out that his blood was drawn at the hospital, after the accident, not at the time of the accident. Therefore, Plaintiff argues, because it takes the human body some time to get the alcohol from the stomach to the blood, his blood alcohol content could have been lower than .157% at the time of the accident. Plaintiff's argument is purely speculative and cannot defeat Defendants motions for summary judgment.

Under ERISA, in order for coverage to exist, there is no requirement of a writing. See Donovan v. Dillingham, 688 F.2d 1367, 1372 (11th Cir. 1982) (while ERISA's fiduciary provisions require the plan to be established pursuant to a written instrument, this is only a responsibility of the administrator and not a prerequisite to ERISA coverage). In Donovan, the Eleventh Circuit formulated the prevailing standard for determining whether a "plan" within the meaning of ERISA has been established:

> In summary, a "plan, fund, or program" under ERISA is established if from the surrounding circumstances a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits.

Donovan, 688 F.2d at 1373.

The drafts of the subject policy reflect Aetna's intent to establish a regular and ongoing insurance benefits program for Janney employees. Every writing since Janney selected Aetna to provide life insurance and health benefits to its employees through the request for proposal process clearly set out the alcohol exclusion. While it is true that Defendants were unable to finalize Plan documents until almost two years after the policy's effective date, a reasonable person could easily conclude from the draft documents that accidents resulting from alcohol consumption would be excluded from coverage.

Summary Judgment in favor of both Defendants is appropriate, for there is no genuine issue of material fact as to whether Aetna acted arbitrarily and capriciously in denying benefits to Plaintiff, even under the moderately heightened arbitrary and capricious standard of review which I have conducted.

B. Failure to Provide Requested Information

Janney moves for summary judgment on Count II of Plaintiff's Complaint, which asserts a violation of ERISA's reporting and disclosure requirements by failing to provide Plaintiff with requested information. In addition, Janney brings a cross-claim for indemnity against Defendant Aetna, asserting that, in the event that it is liable for failing to provide requested information to Plaintiff, any damage suffered by Plaintiff was substantially caused by Aetna. Aetna maintains, and the parties appear to agree, that Count II of Plaintiff's Complaint is directed at Janney only. However, Aetna moves for summary judgment on Janney's cross-claim against it, arguing that it cannot be liable for violations of ERISA's reporting and disclosure requirements because it is not the Plan administrator.

Plaintiff alleges that after the accident, he requested Plan documentation from Janney which would describe the insurance benefits available to him and that those documents were not provided to him until the summer of 2000. ERISA imposes upon the

administrators of employee benefit plans certain reporting and disclosure requirements. The relevant provisions are codified at 29 U.S.C. §§ 1021-1031 and § 1133. Plaintiff does not specify which disclosure provision he contends was violated by Janney, however, I assume that his Complaint at least alleges a violation of Section 1024(b)(4). Section 1024(b)(4) provides in pertinent part:

> The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract or other instruments under which the plan is established or operated. . . .

Liability for failure to comply with ERISA's disclosure requirements is provided by 29 U.S.C. § 1132(c)(1), which provides in pertinent part:

> Any administrator . . . who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

Plaintiff relies upon this provision in seeking to hold Janney liable for delay in furnishing the requested information with

respect to the insurance benefits to which he may have been entitled to after the accident.

According to Plaintiff, he made an ERISA document request in June of 1999, but that Janney did not comply with that request until the summer of 2000.[3] Janney was required by § 1132 to furnish the requested information within thirty days of the request. However, I first note that Plaintiff's request for documents in June of 1999 was an oral request. If Plaintiff's § 1132(c)(1) claim is predicated solely on Janney's alleged violation of 29 U.S.C. § 1024(b)(4), the fact that Plaintiff did not make his document request in writing would defeat Plaintiff's claim. See 29 U.S.C. § 1024(b)(4) ("The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description[.]" (Emphasis added)).[4] However, it appears that Plaintiff's counsel made at least one follow-up request for Plan documents in writing on December 22, 1999. Plaintiff's counsel's letter stated:

---

3. According to Mary Ann Melchiorre, Janney's former Director of Human Resources, Plaintiff requested a copy of the Long Term Disability Plan and the Supplemental Life Insurance Plan on July 27, 1999.

4. An oral request is sufficient to trigger civil penalties for an administrator's failure to provide information when the participant relies on a section other than § 1024(b)(4). See Crotty v. Cook, 121 F.3d 541, 547-548 (9th Cir. 1997). Thus, a plan's failure to comply with a participant's oral request for information ERISA requires the plan to provide is sufficient to trigger statutory damages under §1132(c)(1), provided that ERISA does not explicitly state that the request for the relevant documents or information must be made in writing. See id. at 548.

> It is my understanding that Mr. Jones has a policy with an effective date of November 1, 1998. Accordingly, I request that you provide me with a copy of the policy and disability booklet which was in effect at the time of the policy's effective date, November 1, 1998. The only booklets or coverage documentation that has been supplied to date concerns documents which were prepared after Mr. Jones' accident.

Next, I note that Plaintiff's allegation that Janney did not comply with his document request until the summer of 2000 is not entirely accurate. On July 29, 1999, in response to Plaintiff's oral request, Janney sent Plaintiff its Group Long Term Disability booklet. On August 10, 1999, again in response to Plaintiff's oral request, Janney sent Plaintiff a drafted version of its benefit booklet for life insurance. It is not clear from the record whether Janney responded to Plaintiff's counsel's letter of December 22, 1999. Yet, any failure to respond to Plaintiff's counsel's letter is essentially a continuation of Plaintiff's complaint for failure to respond to Plaintiff's oral request.

Thus, Plaintiff twice requested information, once orally in June of 1999 and once in writing, through counsel's letter, on December 22, 1999. Janney provided Plaintiff a copy of the requested information by August 10, 1999. Janney was required by § 1132 to furnish the requested information within thirty days of the request. Plaintiff does not provide the exact date in June 1999 that he made his oral request for which the

Court can calculate the start of the thirty-day period. Furthermore, Janney puts forth supportive evidence in the form of e-mail communication between its employees that Plaintiff's oral request occurred as late as July 27, 1999. Thus, it appears that Janney's August 10, 1999 response to Plaintiff's oral request did comply with the thirty-day period of § 1132(c)(1). Furthermore, by the time Plaintiff's counsel made his written document request on December 22, 1999, Janney had already provided all relevant documentation in its possession by way of its response to Plaintiff's oral request.

However, Plaintiff does not complain of the delay between his oral request and Janney's response on August 10, 1999. Nor, does Plaintiff complain that his counsel's written request was ignored. Rather, Plaintiff claims that Janney failed to respond to his request for information about benefits to which he was entitled because Janney only provided draft versions of the benefit booklets and not finalized Plan documents. Plaintiff further complains that the delay extends to sometime between the summer of 2000 and October 2000, when Janney finally distributed finalized versions of the Plan documents.

Again, Plaintiff provides no support for the proposition that providing documents in draft form does not comply with the disclosure requirements of ERISA. Reading the plain language of § 1132(c)(1) objectively, I find that an

employee or beneficiary who receives information responsive to his or her request, albeit in draft form, cannot complain that a Plan administrator failed or refused to comply with a request for information. Janney provided Plaintiff with the latest documentation in its possession at the time of Plaintiff's request. This is all that Janney was required to do.

Furthermore, whether a court awards a plaintiff monetary damages under 29 U.S.C. § 1132(c)(1) is a matter of discretion. Hennessy v. FDIC, 58 F.3d 908, 924 (3d Cir. 1995). In deciding whether to assess a penalty under § 1132(c)(1)(B), others courts have considered such factors as "bad faith or intentional conduct on the part of the administrator, the length of the delay, the number of requests made, the documents withheld, and the existence of any prejudice to the participant or beneficiary." Fox v. Law Offices of Shapiro & Kreisman, No. CIV.A. 97-7393, 1998 WL 175865, at *13 (E.D. Pa. April 13, 1998) (quoting Pagovich v. Moskowitz, 865 F. Supp. 130, 137 (S.D.N.Y. 1994)). In this case, there is no evidence of these discretionary factors weighing against Janney.

I find that Janney has adequately complied with Plaintiff's request for information and is not liable under 29 § 1132(c)(1). Therefore, Janney's motion for summary judgment as to Count II of Plaintiff's Complaint is GRANTED. Because Janney

is not liable under section 1132(c)(1), Janney's cross-claim against Aetna is dismissed as moot.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL C. JONES,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 01-2476
	:	
v.	:	
	:	
AETNA LIFE INSURANCE COMPANY	:	
and	:	
JANNEY MONTGOMERY SCOTT, INC.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 14th day of August, 2002, upon consideration of Defendant Aetna Life Insurance Company's Motion for Summary Judgment (Docket No. 25), Plaintiff's answer in opposition thereto (Docket No. 26), and Aetna Life Insurance Company's reply (Docket No. 31), it is hereby **ORDERED** that Aetna Life Insurance Company's motion is **GRANTED**.

Upon consideration of Defendant Janney Montgomery Scott's Motion for Summary Judgment (Docket No. 28), Plaintiff's answer in opposition thereto (Docket No. 37) and Janney Montgomery Scott's reply (Docket No. 38), it is hereby **ORDERED** that Janney Montgomery Scott's motion is **GRANTED**.

In light of the above Order, granting Janney Montgomery Scott's Motion for Summary Judgment, Janney Montgomery Scott's

cross-claim against Aetna Life Insurance Company is **DISMISSED** as **MOOT**.

Judgment is entered in favor of Defendants Aetna Life Insurance Company and Janney Montgomery Scott and against Plaintiff Daniel C. Jones.

This case is marked **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.