

**IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

CIGNA CORPORATION,	:	FEBRUARY TERM, 2012
	:	
Plaintiff,	:	
	:	
v.	:	No. 03993
	:	
EXECUTIVE RISK INDEMNITY, INC.	:	
	:	
and	:	COMMERCE PROGRAM
	:	
NUTMEG INSURANCE COMPANY,	:	
	:	Control No. 13080398
Defendants.	:	
	:	

ORDER

AND NOW, this 18th day of October, 2013, upon consideration of Defendants Executive Risk Indemnity, Inc. and Nutmeg Insurance Company's Motion for Summary Judgment, Plaintiff's response in opposition thereto, and Defendants' reply, it is hereby **ORDERED** that the Motion is **GRANTED** and Cigna Corporation's Complaint is hereby **DISMISSED WITH PREJUDICE**.

BY THE COURT:

ALBERT JOHN SNITE, JR., J.

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NUTMEG INSURANCE COMPANY,	:	
	:	Control No. 13080398
Defendants.	:	
	:	

OPINION

By: Honorable Albert John Snite, Jr.

This is an insurance coverage dispute between Cigna Corporation (“Cigna”) and its insurers. Plaintiff is seeking coverage for liability arising from a national class action brought by former and current Cigna employees seeking payment of benefits and related declaratory and equitable relief arising from Cigna’s amendment of its requirement plan on December 21, 1998, retroactive to January 1, 1998. Before the court is Defendants Executive Risk Indemnity, Inc. and Nutmeg Insurance Company’s Motion for Summary Judgment, Plaintiff’s response in opposition thereto, and Defendants’ reply.

DISCUSSION

In the underlying *Amara* litigation, Judge Kravitz in the United States District Court for the District of Connecticut originally found Cigna liable for its deliberately misleading conduct and statements to its employees in violation of ERISA § 204(h) (“Liability Opinion”). *Amara v. Cigna Corp.*, 534 F. Supp. 2d 288 (D. Conn. 2008). In a separate opinion (“Remedies Opinion”),

the District Court applied the remedy of reformation. *Amara v. Cigna Corp.*, 559 F. Supp. 2d 192 (D. Conn. 2008).

After the District Court's judgment was affirmed by the Second Circuit, Cigna appealed the Remedies Opinion. The Supreme Court vacated the judgment of the District Court, holding that it was error to have relied on ERISA § 502(a)(1)(B) to reform the Cigna Plan. *Cigna Corp. v. Amara* (Amara III), 131 S. Ct. 1866, 1878 (2011). However, the Court concluded that substantially similar relief could be obtained under ERISA § 502(a)(3). *Id.* at 1878, 1880. ERISA § 502(a)(3) creates a cause of action for a "beneficiary...to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter..." Therefore, the question regarding the applicability of § 502(a)(3) was whether reforming the Cigna Plan constitutes "other equitable relief" under the meaning of the statute, which requires the court to consider both the general character of the relief, and the basis for the plaintiffs' claim. *See Sereboff v. Mid Atl. Med. Servs., Inc.*, 126 S. Ct. 1869. The Court remanded the matter to the District Court to determine the appropriate remedy under § 502(a)(3).

On remand, Judge Arterton in the District Court (to whom the case was transferred upon Judge Kravitz's death) considered whether, on the facts before the Court, the employees could establish an equitable basis for reformation ("Remedies Opinion II"). WL 6649587 (D. Conn.). The Court noted that "[e]quity courts traditionally had the power to reform contracts that failed to express the agreement of the parties, owing either to mutual mistake or to the fraud of one party and the mistake of the other." *Id.* at 6. Ultimately, the Court did hold that the employees had established a basis for the Court to reform the Cigna Pension Plan, due to Cigna's fraud, paired with the employees' unilateral mistake. *Id.* The Court found that Cigna's deficient notice led to its employees' misunderstanding of the contract, that instead of taking steps to correct its

mistake Cigna affirmatively misled and prevented employees from obtaining the information that they needed to evaluate the distinctions between the old and new plans, and as a result of Cigna's actions, its employees were mistaken as to their retirement benefits. *Id.*

Certain Underwriters of Lloyd's of London ("Lloyds") was Cigna's primary fiduciary liability insurer for the policy period of March 30, 1999 through March 30, 2002. Defendants are part of the first layer of insurance excess to the Lloyd's policy. Defendants, along with the other first excess carriers, bound excess coverage on a follow-form basis to the Lloyd's Policy, meaning that the terms, conditions and exclusions of the Lloyd's Policy govern this insurance dispute. The Lloyd's Policy contains a Deliberately Fraudulent Acts exclusion which provides, in part:

[Insurers] shall not be liable to pay any Loss under [the Fiduciary Liability] Insuring Agreement in connection with any Claim against the Assureds:

1. brought about or contributed by:

(a) any deliberately fraudulent or criminal act or omission by any of the Assureds...

provided, however, that this exclusion shall not apply unless a final judgment or adjudication adverse to each Assured for which coverage would otherwise apply establishes that such acts or omissions were in fact committed or profits were in fact obtained by each Assured.

Defs.' Mot. Summ. J. Ex. A.

It is Plaintiff's position that the District Court's Remedies Opinion II cannot serve as grounds to bar coverage under the Deliberately Fraudulent Acts exclusion. Plaintiff argues that, despite the Supreme Court's remand of the Remedies Decision to the District Court, the District Court's original Liability Decision remains the controlling decision regarding Cigna's liability. Therefore, Plaintiff claims that Judge Arterton's statements that Cigna's conduct amounts to fraud are nothing more than nonbinding dictum. However, this is not the case, because, as stated above, Judge Arterton was not able to find that reformation was an appropriate remedy under §

502(3)(a) unless she made the determination of Cigna's fraudulent acts and its employees' resulting mistake.

CONCLUSION

Because the District Court's Remedies Opinion II contains a significant finding of deliberately fraudulent acts by Cigna, I am finding that Defendants' Executive Risk Indemnity, Inc. and Nutmeg Insurance Company's Motion for Summary Judgment must be granted. The Lloyds insurance policy, which the Defendants followed, excludes coverage resulting from deliberately fraudulent acts by an assured. The District Court's opinion was a final judgment that Cigna's actions were fraud, and therefore the Deliberately Fraudulent Acts exclusion in the Defendants' insurance policies applies.

BY THE COURT:

DATE: _____

ALBERT JOHN SNITE, JR., J.