

In considering a motion to dismiss made pursuant to Federal Rule of Civil Procedure 12(b)(6), I must accept as true all well-pleaded allegations.² While failure to exhaust administrative remedies available under an ERISA plan may be an affirmative defense to a claim for benefits under the plan,³ I cannot determine that defense on the present motion to dismiss.

The Complaint sets forth a valid cause of action for benefits under ERISA and accordingly, it is **ORDERED** that the Motion to Dismiss is DENIED.

ENTER: January 3, 2005

/s/ JAMES P. JONES
Chief United States District Judge

² See *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

³ See *Bourgeois v. Pension Plan for the Employees of Santa Fe Int'l Corps.*, 215 F.3d 475, 479 (5th Cir. 2000).