

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>CHARLES E. LOWE,</b>	)	
	)	
Plaintiff,	)	Case No. 1:99CV00141
	)	
v.	)	<b>OPINION</b>
	)	
<b>MICHAEL H. HOLLAND, ET AL.,</b>	)	By: James P. Jones
	)	United States District Judge
Defendants.	)	

The question in this ERISA case is whether the plaintiff beneficiary is entitled to an award of civil penalties and attorney’s fees against the benefit plan fiduciaries for an alleged failure to provide him with notice of denial of benefits. I find that the plaintiff is not entitled to relief.

**I**

Charles E. Lowe retired from employment in 1996 as a coal miner with Navaro Mining, Inc. He sought health benefits from the United Mine Workers of America 1993 Benefit Plan (“1993 Plan”) in August of 1997. In the meantime, however, his former employer had ceased business, owing premiums in the amount of \$787.05 to the 1993 Plan. In May of 1999 the delinquent premiums were paid personally by the president of Navaro, at the request of Lowe.

In his complaint in this court filed September 29, 1999, Lowe alleged that he had been advised that the trustees had failed to vote that he be granted health benefits, but that he had not been supplied notice of this denial, in contravention of 29 U.S.C.A. § 1133 (West 1999). He expressly disclaimed any intent to seek a review of the denial of benefits (Compl. at 3), but sought a declaration that he was entitled to such notice, one hundred dollars per day statutory damages, and attorney's fees.

In their answer to the complaint, the defendant trustees averred that they had deadlocked on whether or not to grant benefits to Lowe, and that the question had been submitted to binding arbitration pursuant to § 302(c)(5) of the Labor Management Relations Act, 29 U.S.C.A. § 186(c)(5) (West 1998). During the pendency of this action, the arbitrator found in favor of Lowe, and on November 8, 2000, Lowe's eligibility for benefits was approved by the trustees.

The parties have filed cross motions for summary judgment, which have been briefed and argued and are ripe for decision.

## II

The 1993 Plan is an irrevocable trust created pursuant to § 302(c) of the Labor Management Act of 1947, 29 U.S.C.A. § 186(c) (West 1998), and is an employee benefit plan within the meaning of § 3(1) of the Employee Retirement Income Security

Act of 1974 (“ERISA”), 29 U.S.C.A. § 1002(1) (West 1999). The 1993 Plan is a creature of collective bargaining in the coal industry, and its intent is to provide benefits to miners not otherwise covered under the mechanisms established by the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C.A. §§ 9701-22 (West Supp. 2000), also known as the Coal Act. *See Pa. Mines Corp. v. Holland*, 197 F.3d 114, 118 (3d Cir. 1999).

ERISA requires notice of a denial of a claim, as follows:

In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant. . . .

29 U.S.C.A. § 1133.

ERISA also provides, in pertinent part, that:

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) . . . 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.

29 U.S.C.A. § 1132(c)(1) (West 1999).

The record shows that Lowe wrote to the 1993 Plan on May 13, 1999 (a letter received on May 17), requesting a statement of the reasons he had not been granted health benefits. The 1993 Plan did not respond until November 16, 1999, after the present lawsuit had been filed, advising Lowe that his claim “will be taken to deadlock arbitration.” The actual tie vote of the trustees had occurred at a meeting on July 14, 1999.

Lowe argues that at the least he should be awarded statutory per diem damages during the period of time following his letter until notice to him of the deadlock.<sup>1</sup> In addition, he asserts that he should be awarded attorney’s fees because the present lawsuit was instrumental in his obtaining benefits.

### III

Summary judgment is appropriate when there is “no genuine issue of material fact,” given the parties’ burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c). In determining whether the moving

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<sup>1</sup> Lowe agrees that the 1993 Plan was entitled to a reasonable time to respond, so that even under his argument, not all of the time would be subject to penalty. *See* 29 C.F.R. § 2560.503-1(e) (2000) (providing that notice of denial is due within “a reasonable period of time” and that absent “special circumstances” time beyond ninety days is deemed to be unreasonable.).

party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

Rule 56 “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary judgment is not “a disfavored procedural shortcut,” but an important mechanism for weeding out “claims and defenses [that] have no factual basis.” *Id.* at 327.

There are no genuine issues of material fact in dispute in this case, and thus summary judgment, based on the present record, is appropriate.

As to the statutory damages issue, Lowe concedes that there is authority that such damages are not awardable against the individual trustees in case of a violation of § 1133, since that section refers to the duties of plans, and not the plan administrators. *See, e.g., Wilczynski v. Lumbermens Mut. Cas. Co.*, 93 F.3d 397, 405-06 (7th Cir. 1996). Nevertheless, even assuming that it was possible to award such damages against the trustees, and even assuming that the deadlock constituted a denial

of benefits within the meaning of § 1133, I would exercise my discretion in this case not to do so. While Lowe could have been more promptly notified of the deadlock concerning his benefits, the evidence suggests no bad faith or improper motive and no prejudice to the claimant. *See Faircloth v. Lundy Packing Co.*, 91 F.3d 648, 659 (4th Cir. 1996) (discussing factors for district court to consider in assessing penalty under § 1132(c)).

Lowe also seeks an award of attorney's fees pursuant to 29 U.S.C.A. § 1132(g)(1) (West 1999). However, that provision has been authoritatively interpreted to apply only to prevailing parties. *See Martin v. Blue Cross & Blue Shield of Va., Inc.*, 115 F.3d 1201, 1210 (4th Cir. 1997). Since Lowe is not entitled to relief in this action, he cannot receive attorney's fees. Moreover, this action did not seek the award of benefits to Lowe, and there is no evidence that it affected that award in any manner. Thus, even under a "catalyst theory," *but see S-1 v. State Bd. of Educ.*, 21 F.3d 49, 51 (4th Cir. 1994) (rejecting catalyst theory under 42 U.S.C.A. § 1988 (West 1994)), Lowe cannot claim on this record that this lawsuit produced his ultimate victory in obtaining benefits at the hands of the deadlock arbitrator.

IV

For the foregoing reasons, the defendant's motion for summary judgment will be granted and final judgment entered against the plaintiff.

DATED: February 15, 2001

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United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
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<b>CHARLES E. LOWE,</b>	)	
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Plaintiff,	)	Case No. 1:99CV00141
	)	
v.	)	<b>FINAL JUDGMENT</b>
	)	
<b>MICHAEL H. HOLLAND, ET AL.,</b>	)	By: James P. Jones
	)	United States District Judge
Defendants.	)	

For the reasons stated in the opinion accompanying this final judgment, it is **ADJUDGED AND ORDERED** that the motion for summary judgment by the defendant is granted and final judgment on the merits is entered in favor of the defendant.

The clerk is directed to close the case.

ENTER: February 15, 2001

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United States District Judge