

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

GARNET TURNER, individually and on)
behalf of all others similarly situated,)
)
Plaintiff,)
)
v.)
)
ALLSTATE INSURANCE COMPANY,)
)
Defendant.)

**CIVIL ACTION NUMBER:
2:13-cv-00685-MEF-CSC**

DEFENDANT’S MOTION TO DISMISS

Defendant, Allstate Insurance Company (hereinafter “Defendant” or “Allstate”), pursuant to Federal Rule of Civil Procedure 12(b)(6), moves this Court to dismiss this case for failure to state a claim upon which relief can be granted and alternatively because it is time-barred. As grounds for this dismissal, Defendant states as follows:

1. On September 23, 2013, Plaintiff filed his Class Action Complaint seeking declaratory and other relief because Allstate announced that it was exercising its right to terminate payment of life insurance premiums for retirees effective 2016. In doing so, Plaintiff claims that Allstate breached a fiduciary duty owed to Plaintiff because of Plaintiff’s participation in the Allstate Group Life and Accidental Death and Dismemberment Insurance Plan.

2. The Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et. seq., governs this controversy and provides the exclusive remedy for the enforcement of rights and duties arising from any employer maintained “employee welfare benefit plan.” 29 U.S.C. §§ 1002(1) and 1144. Specifically at issue are ERISA Sections 413 and 502(a)(3), 29 U.S.C. §§ 1113 and 1132(a)(3).

3. In support of its Motion to Dismiss, Defendant has attached as Exhibit A the Allstate Group Life and Accidental Death and Dismemberment Insurance Plan (the “Plan”), which is referenced in Plaintiff’s Class Action Complaint. To the extent that the authenticity of the Plan may be at issue, Defendant has attached as Exhibit B a Declaration of Heather Dumas, who testifies that Exhibit A is a true and correct copy of the Plan that Plaintiff references and relies on.

4. Defendant is filing contemporaneously with this motion its Brief in Support of Defendant’s Motion to Dismiss.

WHEREFORE, Allstate requests that the Court grant its Motion to Dismiss and enter judgment in its favor and against Plaintiff, and award Allstate such other relief as may be just.

Dated: November 15, 2013

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2013, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following:

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