

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

PATRICIA BENJAMIN, court appointed	)	
guardian of the Estate of RONALD WILLIAMS	)	
a Minor,	)	CIVIL NO.08-cv-
	)	
Plaintiff.	)	
	)	
vs.	)	
	)	
ESSO STANDARD OIL CO., P. R.MEDICAL	)	Action for ERISA damages
INSURANCE AIG LIFE INSURANCE	)	penalties, COBRA
CO.- MCS, and ESSOSTANDARD OIL	)	continuation benefits,
COMPANY(PUERTO RICO ),	)	penalties attorneys fees
Defendants	)	and costs.
	)	

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COMPLAINT

COMES NOW, the plaintiff, PATRICIA BENJAMIN, by and through her undersigned counsel and for her complaint against the Defendants states as follows:

1. This is an action pursuant to 29 U.S.C. §§132 (a)(1)(B), ( c )(g), and 1024(b)(4) to collect the following: benefits due under the plan; penalties under ERISA for failure to notify a qualified beneficiary of her rights to continuation coverage under COBRA; attorney fees and costs; and penalties for the failure to provide a copy of the summary plan description (SPD).
2. This action by the court appointed representative of the minor beneficiary is allowed pursuant to 29 U.S.C. §32(a)(1)(B).
3. This court has jurisdiction pursuant to 29 U.S.C. §1132(e) and 28 U.S.C.

§1331.

4. Venue is proper within the District of the Virgin Islands pursuant to 29 U.S.C. §1132(e)(2) because the acts complained of have occurred within this district.

5. Plaintiff, Patricia Benjamin, is a United States citizen and resident of the Territory of the Virgin Islands. Patricia Benjamin represents the minor qualified beneficiary, who is the child of a former employee of Esso Virgin Islands, Inc., and a participant in the Esso Standard Oil Co P.R. Medical Insurance Plan, ("MEDICAL INSURANCE PLAN") as defined by ERISA §3(7), 29 U.S.C. §1002(7).

6. Defendant, Esso Standard Oil Company (Puerto Rico), was at all times relevant to this complaint; a plan administrator and "plan sponsor" of the "MEDICAL INSURANCE PLAN", pursuant to ERISA §16(A)(i),(ii) & (B)(i), 29 U.S.C. §1002(16)(A)(i),(ii) & (B)(i); and a Commonwealth of Puerto Rico corporation doing business in the Virgin Islands.

7. Defendant, "MEDICAL INSURANCE PLAN" is an "employee welfare benefit plan," pursuant to ERISA §(1), 29 U.S.C. §1002(1). "MEDICAL INSURANCE PLAN" is named a party defendant pursuant to Rule 19(a), Fed. R. Civ. P.

8. Defendant Esso Standard Oil Company (Puerto Rico) employs and has at all

times mentioned in this complaint employed 20 or more employees. As such, it is subject to Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) regulation.

9. At all times material to this action the “MEDICAL INSURANCE PLAN” has been an employee benefit plan with the meaning of Section 4 (a)(1) of ERISA, 29 U.S.C. §1003(a)(1) and a group health plan pursuant to 29 U.S.C. §1167(1).

10. Plaintiff was and is entitled to receive continuation health benefits under the “MEDICAL INSURANCE PLAN” administered by defendant Esso Standard Oil Company (Puerto Rico). ERISA §502(a)(1), 29 U.S.C. §1132(a)(1).

11. Fitzroy Williams, the participant, was terminated from his employment with Esso Virgin Islands, Inc., on October 23, 1994, and was a participant in the MEDICAL INSURANCE PLAN. The termination of Fitzroy Williams employment constituted a “qualifying event” pursuant to 29 U.S.C. §1163.

12. The plan participant was not terminated for gross misconduct, but instead was terminated for not appearing for work, after being injured in a plane crash. 29 U.S.C. §1163(2).

13. Based upon the “qualifying event” plaintiff, a named plan beneficiary, was entitled to continuation medical coverage pursuant to 29 U.S.C. 1161.

14. Plaintiff is a qualified beneficiary pursuant to 29 U.S.C. §1167 (3)(ii).

15. COBRA requires the administrator of the "MEDICAL INSURANCE PLAN" to notify a qualified beneficiary, in this case plaintiff, of his rights to continuation medical coverage. 29 U.S.C. § 116(a)(4)(A). However, as of the date of filing this Complaint, Esso Standard Oil Company (Puerto Rico), the administrator, has not notified plaintiff about her COBRA right to continuation medical coverage within 44 days of the qualifying event.
16. The qualified beneficiary suffered from asthma as an infant and required large quantities of medicine and frequent visits to doctors. The qualified beneficiary's mother was not covered by any health plan so the payment of the medical costs was a great burden and tremendous expense.
17. The reason the qualified beneficiary's mother sent, on or about January 15, 1995, a notarized letter to Esso Virgin Islands, Inc., the employer and agent of the plan administrator, requesting information regarding the benefits that were due the qualified beneficiary as a result of the participant's death was because she had never seen a summary plan description (SPD) or received COBRA notification. She was totally unaware of the coverage under the "MEDICAL INSURANCE PLAN". At no time did the employer and agent of the administrator or the plan administrator advise the qualified beneficiary of her right to continuation coverage, as required by law.
18. Plaintiff discovered the existence of the "MEDICAL INSURANCE PLAN"

While investigating the alleged existence of an ERISA group life insurance plan, Esso Virgin Islands, Inc. claims exists. Since plaintiff had never received any information regarding any ERISA plan she searched old records of the plan participant and discovered the "MEDICAL INSURANCE PLAN" enrollment card that was provided to the participant. No records existed that indicated Fitzroy Williams, the participant, had individually paid for health insurance, therefore Plaintiff obtained a copy of the most recent Form 5500 from the U.S. Department of Labor, and from said document determined that she was a qualified beneficiary under the plan

19. All personnel records for Esso Virgin Islands, Inc., employees and former Employees are located at the Human Resources offices for the Esso Standard Oil Company (Puerto Rico). That is also the designated location of the "MEDICAL INSURANCE PLAN".

20. As a result of defendant's failure to notify plaintiff of her right to continuation coverage under the "MEDICAL INSURANCE PLAN" for a period of 18 months, plaintiff was incurred medical bills in a sum of over \$10,000.

## COUNT II

### VIOLATION OF 29 U.S.C. §§1132(a)(1)(A) 1024(b)(4)

21. Plaintiff hereby adopt, incorporate and restate Paragraphs 1 through 20.

22. Plaintiff is a qualified beneficiary in the "MEDICAL INSURANCE PLAN"

within the meaning of Section 3(8) of ERISA ( 29 U.S.C. § 1002( 8)).

23. The deceased participant was never given a copy of the Summary Plan Description (SPD) for the “MEDICAL INSURANCE PLAN”, but he contributed to said plan, by payroll deduction each and every payday until he died.

24. On or about January 15, 1995, Doldria Benjamin, the mother of the minor qualified beneficiary sent a notarized written request to Esso Virgin Islands, Inc., the employer and agent of the plan administrator, for all available documents relating to the current operation and benefits due of the “MEDICAL INSURANCE PLAN”. The Human Resources Manager of Esso Virgin Islands, Inc., is the Human Resources Manager of Esso Standard Oil Company (Rico), which is the administrator of the plan.

25. On October 24, 2008, plaintiff herein, sent a written request to the Administrator for the “MEDICAL INSURANCE PLAN” for the latest available summary plan description, plan description, annual report and all other available documents relating to the current operation and benefits due under the Plan.

26. Defendant, on at least one occasion, has failed to respond to plaintiff written requests for a period of more than thirty (30) days and has thereby violated Sections 104(b)(4) and 502 (1) of ERISA (29 U.S.C. §§ 1024(b)(4), 1132( c) (1)).

COUNT III

ATTORNEY 'S FEES AND COSTS,  
PURSUANT TO 29 U.S.C. §1132(g)(1).

27. Plaintiff hereby adopt, incorporate and restate Paragraphs 1 through 26.
28. 29 U.S.C. Section 1132 (g)(1) authorizes this Court to award reasonable attorneys fees and costs of action to either party in an ERISA action.
29. As a result of the actions and failings of the Defendants, plaintiff has retained the services of legal counsel and has necessarily incurred attorneys fees and costs in prosecuting this action. Further, plaintiff anticipates incurring additional attorneys fees and costs in hereafter pursuing this action, all in a final amount which is currently unknown. Plaintiff therefore requests an award of reasonable attorneys fees and costs.

WHEREFORE, Plaintiff prays that the court enters its judgment against Defendants, as follows:

1. That defendant Esso Standard Oil Co., P.R. AIG Life Insurance Co. MCS be required to pay all sums of money expended by plaintiff for medical expenses for the 18 months that she was denied continuation coverage, plus prejudgment interest at 9%.
2. That defendant Esso Standard Oil Company (Puerto Rico), as administrator of the Medical Insurance Plan be ordered to pay \$100 per day in penalties from December 4, 1994 until July 29, 1997 and \$110.00 per day from July 29, 1997 until the date it complies with 29 U.S.C. §1132(c).
3. That defendant Esso Standard Oil Company (Puerto Rico), as administrator of the Medical Insurance Plan be ordered to pay \$100 per day in penalties from February 15, 1995 until July 29, 1997 and

\$110 per day in from July 29, 1997 until the date it complies with 29 U.S.C. §1024(b)(4).

- 4. Attorney's fees and costs pursuant to 29 U.S.C. 1132(g).

DATED:

P.C.

LAW OFFICES KENTH W. ROGERS,

Attorneys for Plaintiff

/s/ Kenth W. Rogers  
KENTH W. ROGERS, ESQ.  
15A Lindberg Bay  
P.O. Box 9398  
St. Thomas, VI 00801  
(340) 7751920

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Complaint has been served by Certified Mail, as required by 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §132(h) this 15<sup>th</sup> IN THE DISTRICT COURT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX

PATRICIA BENJAMIN, court appointed )  
guardian of the Estate of RONALD WILLIAMS , )  
a Minor, )  
Plaintiff. )  
vs. )  
ESSO STANDARD OIL CO., P. R. MEDICAL )  
INSURANCE AIG LIFE INSURANCE )  
CO.- MCS, and ESSOSTANDARD OIL )  
COMPANY (PUERTO RICO), )  
Defendants )

CIVIL NO.08-cv-

Action for ERISA plan benefits,  
penalties, COBRA continuation  
benefits, penalties, attorney  
fees and costs.

COMPLAINT

COMES NOW, the plaintiff, PATRICIA BENJAMIN, by and through her undersigned counsel and for her complaint against the defendants ~~states~~ ~~as follows~~:

1. This is an action pursuant to 29 U.S.C. §§1132 (a)(1)(B),( c ), and (g), 1024(b)(4) to collect the following: benefits due under the plan; penalties under ERISA for failure to notify a qualified beneficiary of her rights to continuation ~~coverage~~ under COBRA; attorney's fees and costs; and penalties for the failure to provide a copy of the summary plan description (SPD).
2. This action by the court appointed representative of the minor beneficiary is allowed pursuant to 29 U.S.C. §1132(a)(~~B~~).
3. This court has jurisdiction pursuant to 29 U.S.C. §1132(e) and 28 U.S.C. §1331.
4. Venue is proper within the District of the Virgin Islands pursuant to 29 U.S.C. §1132(e)(2) because the acts complained of have occurred within this district.
5. Plaintiff, Patricia Benjamin, is a United States citizen and resident of the Territory of the Virgin Islands. Patricia Benjamin represents the minor qualified beneficiary, who is the child of a former employee of Esso Virgin Islands, Inc., and a participant in the Esso Standard Oil Co P.R. Medical Insurance AIG Life Insurance ~~Plan~~, ("MEDICAL INSURANCE PLAN") as defined by ERISA §3(7), 29 U.S.C. §1002(7).
6. Defendant, Esso Standard Oil Company (Puerto Rico), was at all times relevant to this complaint; a plan administrator and plan sponsor of the "MEDICAL INSURANCE PLAN", pursuant to ERISA §3(16)(A)(i),(ii) & (B)(i), 29 U.S.C. §1002(16)(A)(i),(ii) & (B)(i); and a Commonwealth of Puerto Rico corporation doing business in the Virgin Islands.
7. Defendant, "MEDICAL INSURANCE PLAN" is an "employee welfare benefit plan", pursuant to ERISA §3(1), 29 U.S.C. § 1002(1). "MEDICAL INSURANCE PLAN" is named a party defendant pursuant to Rule 19(a), Fed. R. Civ. P.

8. Defendant Esso Standard Oil Company(Puerto Rico) employs and has at all times mentioned in this complaint employed 20 or more employees. As such, it is subject to Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) regulation.

9. At all times material to this action the 'MEDICAL INSURANCE PLAN' has been an employee benefit plan within the meaning of Section 4 (a)(1) of ERISA, 29 U.S.C. §1003(a)(1) and a group health plan pursuant to 29 U.S.C. §1167(1).

10. Plaintiff was and is entitled to receive continuation health benefits under 'MEDICAL INSURANCE PLAN' administered by defendant Esso Standard Oil Company(Puerto Rico). ERISA §502(a)(1), 29 U.S.C. § 1132(a)(1).

11. Fitzroy Williams, the participant, was terminated from his employment with Esso Virgin Islands, Inc., on October 23, 1994, and was a participant in the MEDICAL INSURANCE PLAN. The termination of Fitzroy Williams employment constituted a qualifying event pursuant to 29 U.S.C. §1163.

12. The plan participant was not terminated for gross misconduct, but instead was terminated for not appearing for work, after being killed in a plane crash. 29 U.S.C. §1163(2).

13. Based upon the qualifying event plaintiff, a named plan beneficiary, was entitled to continuation medical coverage pursuant to 29 U.S.C. 1161.

14. Plaintiff is a qualified beneficiary pursuant to 29 U.S.C. § 1167 (3)(ii).

15. COBRA requires the administrator of the 'MEDICAL INSURANCE PLAN' to notify a qualified beneficiary, in this case plaintiff, of her rights to continuation medical coverage. 29 U.S.C. §1166(a)(4)(A). However, as of the date of filing this Complaint, Esso Standard Oil Company (Puerto Rico), the administrator, has not notified plaintiff about her COBRA right to continuation medical coverage within 44 days of the qualifying event.

16. The qualified beneficiary suffered from asthma as an infant and required large quantities of medicine and frequent visits to doctors. The qualified beneficiary's mother was not covered by any health plan so the payment of the medical costs was a great burden and tremendous expense.

17. The reason the qualified beneficiary's mother sent, on or about January 15, 1995, a notarized letter to Esso Virgin Islands, Inc., the employer and agent of the plan administrator requesting information regarding the benefits that were due the qualified beneficiary as a result of the participant's death was because she had never seen a summary plan description (SPD) or received COBRA notification. She was totally unaware of the coverage under the 'MEDICAL INSURANCE PLAN'. At no time did the employer and agent of the administrator or the administrator advise the qualified beneficiary of her right to continuation coverage, as required by law.

18. Plaintiff discovered the existence of the "MEDICAL INSURANCE PLAN" while investigating the alleged existence of an ERISA group life insurance plan, Esso Virgin Islands, Inc., claims exists. Since plaintiff had never received any information regarding any ERISA plan she searched old records of the plan participant and discovered the "MEDICAL INSURANCE PLAN" enrollment card that was provided to the participant. No records existed that indicated Fitzroy Williams, the participant, had individually paid for health insurance, therefore Plaintiff obtained a copy of the most recent Form 5500 from the U.S. Department of Labor, and from said document determined that she was a qualified beneficiary under the plan.

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20. As a result of defendant's failure to notify plaintiff of her right to continuation coverage under the "MEDICAL INSURANCE PLAN" for a period of 18 months, plaintiff was incurred medical bills in a sum of over \$10,000.

## COUNT II

### VIOLATION OF 29 U.S.C. §§1132(a)(1)(A) 1024(b)(4)

21. Plaintiff hereby adopt, incorporate and restate Paragraph through 20.

22. Plaintiff is a qualified beneficiary in the "MEDICAL INSURANCE PLAN" within the meaning of Section 3(8) of ERISA ( 29 U.S.C. §1002( 8).

23. The deceased participant was never given a copy of the Summary Plan Description (SPD) for the "MEDICAL INSURANCE PLAN", but he contributed to said plan, by payroll deduction each and every payday until he died.

24. On or about January 15, 1995, Doldria Benjamin, the mother of the minor qualified beneficiary sent a notarized written request to Esso Virgin Islands, Inc., the employer and agent of the plan administrator, for all available documents relating to the current operation and benefits due of the "MEDICAL INSURANCE PLAN". The Human Resources Manager of Esso Virgin Islands, Inc., is the Human Resources Manager of Esso Standard Oil Company (Puerto Rico), which is the administrator of the plan.

25. On October 24, 2008, plaintiff herein, sent a written request to the Administrator for the "MEDICAL INSURANCE PLAN" for the latest available summary plan description, plan description, annual report and all other available documents relating to the current operation and benefits due under the Plan.

26. Defendant, on at least one occasion, has failed to respond to plaintiff's requests for a period of more than thirty (30) days and has thereby violated Sections 104(b)(4) and 502

( c )(1) of ERISA (29 U.S.C. §§1024(b)(4), 1132( c )(1)).

COUNT III

ATTORNEY' S FEES AND COSTS,  
PURSUANT TO 29 U.S.C. §1132(g)(1).

27. Plaintiff hereby adopt, incorporate and restate Paragraphs 1 through 26.

28. 29 U.S.C. Section 1132 (g)(1) authorizes this Court to award reasonable attorney fees and costs of action to either party in an ERISA action.

29. As a result of the actions and failings of the Defendants, plaintiff retained the services of legal counsel and has necessarily incurred attorney fees and costs in prosecuting this action. Further, plaintiff anticipates incurring additional attorney fees and costs in hereafter pursuing this action, all in a final amount which is currently unknown. Plaintiff therefore requests an award of reasonable attorney fees and costs.

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2. That defendant Esso Standard Oil Company (Puerto Rico), as administrator of the Medical Insurance Plan be ordered to pay \$100 per day in penalties from December 4, 1994 until July 29, 1997 and \$110.00 per day from July 29, 1997 until the date it complies with 29 S.C. §1132©).
3. That defendant Esso Standard Oil Company (Puerto Rico), as administrator of the Medical Insurance Plan be ordered to pay \$100 per day in penalties from February 15, 1995 until July 29, 1997 and \$110 per day in from July 29, 1997 until the date it complies with 29 U.S.C. §1024(b)(4).
4. Attorney's fees and costs pursuant to 29 U.S.C. 1132(g).

DATED:

LAW OFFICES KENTH W. ROGERS, P.C.  
Attorneys for Plaintiff

/s/ Kenth W. Rogers

KENTH W. ROGERS, ESQ.  
15A Lindberg Bay  
P.O. Box 9398  
St. Thomas, VI 00801  
(340) 7754920

### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Complaint has been served by Certified Mail, as required by 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(h) this 15<sup>th</sup> day of November, 2008 on the following:

Secretary of the Treasury  
Internal Revenue Service  
P.O. Box 13163  
Baltimore, MD 21203  
Attention : Employee Plans

Secretary of Labor  
200 Constitution Ave., N.W.  
Washington, D.C. 20210  
Attention: Assistant Solicitor for Plan Benefits Security

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