

APPENDIX-A

DLD-124

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 18-3202

**GREGORY STANLEY ROBERTS,
Appellant**

v.

INSERVCO INSURANCE SERVICES

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 17-cv-00476)
District Judge: Cynthia M. Rufe

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 7, 2019

Before: JORDAN, GREENAWAY, JR. and NYGAARD, Circuit Judges

(Opinion filed: April 4, 2019)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Gregory Stanley Roberts appeals from an order of the District Court dismissing his third amended complaint for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1). For the reasons that follow, we will summarily affirm.

Roberts worked for the Pennsylvania Department of Public Welfare (“DPW”) as a houseparent at its Bensalem Youth Development Center for approximately 20 years. In the course of his employment, Roberts suffered injuries in 1997 and 1998, after which he did not return to work in any capacity. Soon after he stopped working for DPW, Roberts applied for and received a retirement pension from DPW and a Social Security disability pension. He was fifty-one years old at the time.

In June 2004, DPW filed a modification petition based on a labor market survey indicating that positions were generally available to Roberts within his restrictions. DPW also filed a suspension petition, seeking to suspend Roberts’ benefits as of June 15, 1999 on the ground that he voluntarily left the labor market as of that date. After much litigation, DPW prevailed and the Commonwealth Court ordered that Roberts’ benefits be suspended, see Dep’t of Public Welfare v. Workers’ Compensation Appeal Bd. (Roberts), 29 A.3d 403 (Pa. Commw. Ct. 2011) (“Roberts I”). The Court held that Roberts voluntarily withdrew from the workforce. Id. at 407-08. The Court then remanded for a determination of when the suspension of benefits should begin. Id. at 408. In June 2012, the Workers’ Compensation Judge found that the effective date of suspension of benefits should be June 5, 1999 (rather than June 15, 1999). In February 2013, the Workers’ Compensation Appeal Board affirmed and Roberts did not petition for review of that decision to the Commonwealth Court.

In April 2013, Roberts filed a petition for penalties, alleging that DPW failed to pay him benefits pursuant to the Workers' Compensation Appeal Board February 2013 decision. The petition was denied by the Workers' Compensation Judge and the Workers' Compensation Appeal Board affirmed in October 2014. Roberts then petitioned for review to the Commonwealth Court. On August 14, 2015, the Commonwealth Court affirmed, holding that no penalties were due because Roberts' benefits were properly in a suspended status, see Roberts v. Workers' Compensation Appeal Bd. (Dep't of Public Welfare), 2015 WL 5511171 (Pa. Commw. Ct. Aug. 14, 2015) ("Roberts II"). The Court noted that Roberts' real request was that Roberts I be reversed and that his benefits be reinstated retroactive to the date of suspension. The Commonwealth Court determined, however, that Roberts was barred from relitigating that issue; he had failed to petition for review of the Workers' Compensation Appeal Board's February 2013 decision, and he could not use a penalty petition to challenge the determination that he voluntarily removed himself from the workforce. Id. at *2. The Pennsylvania Supreme Court denied review on March 23, 2016 and the United States Supreme Court denied certiorari on January 9, 2017.

On February 1, 2017, Roberts filed a civil rights complaint pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Pennsylvania against Inservco Insurance Services, Inc., alleging that Inservco was complicit in the wrongful decision to suspend his benefits. Inservco moved to dismiss the complaint for failure to state a plausible claim for relief, Fed. R. Civ. P. 12(b)(6). Roberts then filed an amended complaint, adding the Pennsylvania Department of Human Services ("DHS"), formerly

known as the Department of Public Welfare, and the Bensalem Youth Development Center (“BYDC”) as defendants. He further alleged that Compservices/AmeriHealth, Inc. might be the proper insurance company defendant. DHS/BYDC and Inservco moved to dismiss Roberts’ amended complaint. Roberts responded that he did not intend to sue DHS and BYDC. Accordingly, in an order entered on June 19, 2017, the District Court granted their motion and dismissed DHS and BYDC from the action. The Court then questioned whether Roberts sought to sue Inservco or Compservices/AmeriHealth, or both companies. The Court dismissed Roberts’ amended complaint but gave him another opportunity to amend and urged him to set forth clearly facts alleging why he was entitled to relief and what relief was sought.

Roberts then filed a second amended complaint, naming as the sole defendant Compservices/AmeriHealth. Roberts also filed a motion for leave to amend. On November 22, 2017, the District Court denied the motion for leave to amend without prejudice and granted Roberts’ one final opportunity to amend his complaint. Roberts filed a third amended complaint naming Inservco Insurance Services as the only defendant, and alleging that Inservco had assumed the responsibility of handling his claim. Inservco moved to dismiss the third amended complaint.

In an order entered on September 26, 2018, the District Court dismissed the action under Rule 12(b)(1) and the Rooker-Feldman doctrine for lack of subject matter jurisdiction.¹ The Court determined that Roberts, in arguing a constitutional violation

¹ See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

regarding the deprivation of property and in seeking reinstatement of his benefits, actually sought to challenge the Commonwealth Court's June 21, 2011 decision (Roberts I), upholding the suspension of his workers' compensation benefits.

Roberts appeals. We have jurisdiction under 28 U.S.C. § 1291. Our Clerk granted Roberts leave to appeal in forma pauperis and advised him that the appeal was subject to summary dismissal under 28 U.S.C. § 1915(e)(2)(B) or summary affirmance under Third Cir. LAR 27.4 and I.O.P. 10.6. He has submitted argument in support of his appeal, which we have considered. He has also moved to expedite the appeal.

We will summarily affirm the order of the District Court because no substantial question is raised by this appeal, see Third Cir. LAR 27.4 and I.O.P. 10.6. We exercise plenary review over subject matter jurisdiction dismissals. See In re: Kaiser Group International, Inc., 399 F.3d 558, 560 (3d Cir. 2005) (Fed. R. Civ. P. 12(b)(1)).

"Under the Rooker-Feldman doctrine, a district court is precluded from entertaining an action, that is, the federal court lacks subject matter jurisdiction, if the relief requested effectively would reverse a state court decision or void its ruling." Taliaferro v. Darby Township Zoning Bd., 458 F.3d 181, 192 (3d 2006). The scope of the doctrine is narrow and applies only to cases brought by (1) state-court losers (2) complaining of injuries caused by state-court judgments (3) rendered before the district court proceedings commenced and (4) inviting district court review and rejection of those judgments. Id. (citing Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005)). In Great Western Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 165 (3d Cir. 2010), we held that district courts must use the four-part Exxon Mobil

test to determine whether subject matter jurisdiction is lacking. In In re: Philadelphia Entertainment & Development Partners, 879 F.3d 492, 499-500 (3d Cir. 2018), we reaffirmed that, when a plaintiff attempts to re-litigate matters, a federal court has jurisdiction as long as the plaintiff presents some independent claim, even if that claim denies a legal conclusion reached by the state court.

Applying the correct standard, the District Court properly arrived at the conclusion that Roberts' third amended complaint fits squarely within Rooker-Feldman. Here, Roberts complained of injuries caused by the Commonwealth Court's decision upholding the suspension of his workers' compensation benefits and sought reinstatement of those benefits. He challenged the Commonwealth Court's decision that he voluntarily withdrew from the workforce. Although he invoked the First and Fourteenth Amendments and sued Inservco, he alleged only that Roberts I was wrongly decided. The District Court correctly determined that the instant civil rights action, although it professed to complain of injury by a third party, actually complained of injury produced by a state-court judgment, see Great Western Mining & Mineral Co., 615 F.3d at 167. We agree that the Commonwealth Court's decision(s) resulted in the suspension of Roberts' benefits, and, therefore, are the source of his alleged injury. Moreover, that state court judgment was rendered before the instant action was commenced.

For the foregoing reasons, we will summarily affirm the order of the District Court dismissing Roberts' third amended complaint for lack of subject matter jurisdiction. Roberts' motions for appointment of counsel and to expedite the appeal are denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREGORY S. ROBERTS	:	
Plaintiff,	:	
	:	
v.	:	
	:	
INSERVCO INSURANCE SERVICES, INC.	:	
Defendant.	:	

CIVIL ACTION NO. 17-476

MEMORANDUM OPINION

Rufe, J.

September 25, 2018

Defendant Inservco Insurance Services, Inc. has filed a motion to dismiss Plaintiff Gregory Roberts's Third Amended Complaint for failure to state a plausible claim to relief. For the following reasons, the motion will be granted.

I. BACKGROUND

Plaintiff, proceeding *pro se*, has filed this suit, which appears to relate to a complex and long-running workers' compensation case in Pennsylvania state court. Plaintiff was injured during his employment with the Youth Development Center ("Employer"), retired, and began receiving workers' compensation benefits.¹ Eventually, Employer sought to suspend those benefits and the dispute was brought before the Pennsylvania Commonwealth Court.² The Commonwealth Court held that Plaintiff voluntarily withdrew from the workforce and granted Employer's suspension petition.³

¹ *Dep't of Pub. Welfare/Norristown State Hosp. v. Workers' Comp. Appeal Bd. (Roberts)*, 29 A.3d 403, 404 (Pa. Commw. Ct. 2011) ("Roberts I").

² *Id.* at 406.

³ *Id.* at 407.

Plaintiff's case was remanded to determine the exact date that his benefits should have been suspended.⁴ The Workers' Compensation Judge ("WCJ") found that date to be June 5, 1999 and the Workers' Compensation Appeal Board ("Board") affirmed.⁵ Plaintiff did not appeal this decision but later filed a penalty petition alleging Employer's failure to pay him his benefits.⁶ The case again went before the Commonwealth Court which found that Plaintiff was attempting to use the penalty petition to challenge the ruling in *Roberts I*.⁷ The Commonwealth Court ruled that Plaintiff was barred from re-litigating this issue because he had failed to appeal the Board's affirmation that his benefits should have been suspended on June 5, 1999.⁸

Plaintiff has now filed this action against Inservco, alleging that Defendant has "assumed the handling" and "accepted responsibility" of his claim. Although the Third Amended Complaint is difficult to parse, Plaintiff states facts relating to the previous litigation and alleges that the appeal in *Roberts I* was improper. Plaintiff alleges that his First and Fourteenth Amendment rights were violated, and seeks relief in the form of monetary damages including compensatory damages for his suspended benefits, interest, penalties, and punitive damages.

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 12(b)(1) allows a party to move for dismissal of any claim where the district court lacks subject matter jurisdiction.⁹ When considering a 12(b)(1) motion, the court "review[s] only whether the allegations on the fact of the complaint, taken as

⁴ *Id.* at 408.

⁵ *Roberts v. Workers' Comp. Appeal Bd. (Dep't of Public Welfare)*, No. 2159 C.D. 2014, 2015 WL 5511171, *1 (Pa. Commw. Ct. Aug. 14, 2015) ("Roberts II").

⁶ *Id.* at *2.

⁷ *Id.* at *3.

⁸ *Id.*

⁹ Fed. R. Civ. P. 12(b)(1).

true, allege facts sufficient to invoke the jurisdiction of the district court.”¹⁰ When subject matter jurisdiction is challenged under Rule 12(b)(1), the plaintiff bears the burden of persuasion.¹¹

Pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate where a plaintiff’s “plain statement”¹² lacks enough substance to show that he is entitled to relief.¹³ In determining whether a motion to dismiss should be granted, the Court must consider only those facts alleged in the complaint, accepting all allegations as true and drawing from reasonable inferences in favor of the plaintiff.¹⁴ Courts are not, however, bound to accept as true legal conclusions couched as factual allegations.¹⁵ Something more than a mere possibility of a claim must be alleged; a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.”¹⁶ “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”¹⁷ The complaint must set forth “direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory,”¹⁸ but a “formulaic recitation”¹⁹ of

¹⁰ *Licata v. U.S. Postal Serv.*, 33 F.3d 259, 260 (3d Cir. 1994) (citations omitted).

¹¹ *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991) (citation omitted).

¹² Fed. R. Civ. P. 8(a)(2).

¹³ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

¹⁴ *ALA, Inc. v. CCAIR, Inc.*, 29 F.3d 855, 859 (3d Cir. 1994); *Fay v. Muhlenberg Coll.*, No. 07-4516, 2008 WL 205227, at *2 (E.D. Pa. Jan. 24, 2008).

¹⁵ *Twombly*, 550 U.S. at 555, 564.

¹⁶ *Id.* at 570; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

¹⁷ *Iqbal*, 556 U.S. at 678.

¹⁸ *Twombly*, 550 U.S. at 562 (emphasis in original) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

¹⁹ *Id.* at 545, 555.

the elements is insufficient. The Court has no duty to “conjure up unpledged facts that might turn a frivolous...action into a substantial one.”²⁰

III. DISCUSSION

Plaintiff's claims are barred by the Rooker-Feldman doctrine as the Complaint is in essence an attempt to re-litigate his workers' compensation case. Under the Rooker-Feldman doctrine, federal district courts lack jurisdiction over suits that are essentially appeals from state-court judgments.²¹ There are four requirements that must be met for the doctrine to apply: “(1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state court judgment; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments.”²² In determining whether the alleged injuries were caused by the state court judgment the critical task is “to identify those federal suits that profess to complain of injury by a third party, but actually complain of injury ‘produced by a state-court judgment and not simply ratified, acquiesced in, or left unpunished by it.’”²³

The Commonwealth Court ruled against Plaintiff in *Roberts I* and *Roberts II* and those judgments were rendered before Plaintiff filed this action in federal court.²⁴ Plaintiff has invited the Court to review the *Roberts I* decision by arguing that he is entitled to relief from the

²⁰ *Id.* at 562 (quoting *McGregor v. Indus. Excess Landfill, Inc.*, 856 F.2d 39, 42–43 (6th Cir. 1988)).

²¹ *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 165 (3d Cir. 2010).

²² *Id.* at 166 (quotation marks omitted) (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

²³ *Id.* at 167 (quoting *Hoblock v. Albany Cty. Bd. of Elections*, 442 F.3d 77, 88 (2d Cir. 2005)).

²⁴ See generally *Roberts I*, 29 A.3d 403; *Roberts II*, 2015 WL 5511171. *Roberts I* was decided on June 21, 2011, *Roberts II* was decided on August 14, 2015, and Plaintiff filed his First Complaint with the Court on February 1, 2017.

Commonwealth Court's judgment.²⁵ Plaintiff asserts that his injuries were caused by the suspension of his benefits resulting from the *Roberts I* decision.²⁶ It was the Commonwealth Court decisions that resulted in the suspension of Plaintiff's benefits, and therefore, are the source of Plaintiff's alleged injury. There are no allegations that Defendant has taken any actions not mandated by the Commonwealth Court decisions. The four requirements of the Rooker-Feldman doctrine are therefore satisfied and Plaintiff's claims will be dismissed.

IV. CONCLUSION

The motion to dismiss will be granted. In civil rights cases, "district courts must offer amendment – irrespective of whether it was requested – when dismissing a case for failure to state a claim unless doing so would be inequitable or futile."²⁷ Plaintiff already has had several opportunities to amend, and further amendment would be futile because he has not alleged a claim that this Court may adjudicate. Therefore, the Third Amended Complaint will be dismissed with prejudice. An appropriate order will be entered.

²⁵ Pl.'s Am. Compl. 3, Dec. 7, 2017, ECF No. 23.

²⁶ *Id.* at 4 ("My suspension caused me to lose 290 weeks of Workers Compensation Benefits.").

²⁷ *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREGORY S. ROBERTS	:	
Plaintiff,	:	
	:	
	:	CIVIL ACTION NO. 17-476
v.	:	
	:	
INSERVCO INSURANCE SERVICES, INC.	:	
Defendant.	:	

ORDER

AND NOW, this 25th day of September 2018, upon consideration of Defendant's Motion to Dismiss [Doc. No. 26], and the responses thereto, and for the reasons explained in the Memorandum Opinion issued on this date, it is hereby **ORDERED** that the Motion is **GRANTED**. Plaintiff's Third Amended Complaint is **DISMISSED WITH PREJUDICE**.

The Clerk is directed to **CLOSE** the case.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUGE, J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3202

GREGORY STANLEY ROBERTS,
Appellant

v.

INSERVCO INSURANCE SERVICES

(E.D. Pa. No. 2-17-cv-00476)

SUR PETITION FOR REHEARING

Present: JORDAN, GREENAWAY, JR., and NYGAARD, *Circuit Judges*.

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, and no judge who concurred in the decision having asked for rehearing, the petition for rehearing by the panel is denied.

BY THE COURT,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: April 30, 2019
PDB/cc: Gregory Stanley Roberts
Louis C. Long, Esq.