

Rivera v. Pioneer Futures, Inc.  
N.Y.A.D. 1 Dept.,2007.

Supreme Court, Appellate Division, First  
Department, New York.  
Dennis P. RIVERA, Plaintiff-Appellant,  
v.  
PIONEER FUTURES, INC., etc., et al.,  
Defendants-Respondents.  
June 19, 2007.

McCormick Dunne & Foley, New York ([Christopher P. Foley](#) of counsel), for appellant.

Viola, Benedetti & Azzolini, L.L.C., Florham Park, NJ ([Thomas J. Benedetti](#) of counsel), for Pioneer Futures, Inc., respondent.

**Begos & Horgan**, LLP, Bronxville ([Patrick W. Begos](#) of counsel), for First Unum Life Ins. Co., respondent.

[FRIEDMAN](#), J.P., [NARDELLI](#), [BUCKLEY](#), [SWEENEY](#), [MALONE](#), JJ.

\*1 Order, Supreme Court, New York County (Barbara R. Kapnick, J.), entered September 7, 2006, which granted defendant First Unum's motion for summary judgment and denied plaintiff's cross motion to dismiss said defendant's affirmative defense, unanimously affirmed, without costs.

Plaintiff, although self-employed, is nonetheless a "person designated ... by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder" (29 USC § 1002[8]; see [Yates v. Hendon](#), 541 U.S. 1 [2004]; [Ruttenberg v. United States Life Ins. Co.](#), 413 F3d 652 [7th Cir2005] ), and thus has standing to sue under the Employee Retirement Income Security Act (see § 1132[a] ), preempting all state law claims (§ 1144). Since the decision of the benefits administrator to deny disability benefits, based on the opinions of a neurologist and two neuropsychologists, was not arbitrary and capricious (see [Firestone Tire & Rubber Co. v. Bruch](#), 489 U.S. 101, 115 [1989] ), summary judgment was properly granted to defendant First Unum.

We have considered plaintiff's remaining arguments and find them without merit.

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