

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

SCOTT CORBMAN and
GARFINKLE & CORBMAN, P.C.,

Plaintiffs,

v.

UNUM LIFE INSURANCE COMPANY aka
UNUMPROVIDENT CORPORATION,

Defendant.

CIVIL ACTION

NO. 00-6124

MEMORANDUM

ROBERT F. KELLY, Sr. J.

FEBRUARY 5, 2003

Presently before this Court is the Motion for Summary Judgment and for Partial Summary Judgment filed by the Plaintiffs Scott Corbman and Garfinkle & Corbman, P.C.¹ and the Motion for Summary Judgment filed by the Defendant Unum Life Insurance Company (“Unum”). This action arises from Corbman’s allegation that Unum breached a Business Purchase Disability Income Policy (“the Policy”) and committed acts of bad faith. For the reasons that follow, both Corbman’s Motion and Unum’s Motion are denied.

I. BACKGROUND

Corbman purchased the Policy from Unum with an effective date of February 12, 1988. The Policy provides that benefits would be paid to Corbman in the event that: (1) Corbman becomes totally disabled and cannot perform the material and substantial duties of his

¹ The Parties agree that Corbman is the only true Plaintiff in this action. Therefore, for the remainder of this Opinion, we will refer to the Plaintiffs as “Corbman.”

regular occupation as a trial attorney; (2) Corbman receives appropriate medical care for his disability; (3) the two year elimination period is satisfied, during which, Corbman must remain totally disabled; (4) Corbman was working full time as a trial attorney when the total disability began; and (5) Corbman sells his interest in his law firm, Garfinkle & Corbman, P.C. The benefits under the Policy are a lump sum payment of \$300,000.

Corbman alleges that he became totally disabled in November 1997. Specifically, Corbman alleges that the stress of working as a trial attorney put him at an unreasonable risk of worsening his coronary artery disease which he had developed in 1991. Corbman contends that in November 1997, his treating physicians urged him to change his occupation in order to avoid work stress and the risk of injury. Corbman followed his physicians' advice and stopped practicing trial law at that time. Furthermore, Corbman maintains that he received appropriate medical care for his disability, was totally disabled throughout the elimination period between November 5, 1997 and November 5, 1999, was working full time when the total disability began, and sold his interest in the law firm when he stopped working. Corbman therefore argues that Unum should pay him the benefits due under the Policy.

Moreover, Corbman alleges that Unum had held the position that he was totally disabled throughout the elimination period and even after the elimination period concluded until Unum reversed its decision two months after the elimination period ended and denied his claim. Corbman further contends that Unum asked him to participate in two Independent Medical Examinations ("IME") several months after the elimination period concluded, the results of which Unum fraudulently used to support its revised position that he was not disabled. Corbman argues that Unum's decision to reverse its initial finding of total disability and deny his claim

arose out of internal policy changes which occurred after a merger between Unum and several other insurance companies a few months before his elimination period ended. Corbman contends that Unum denied his claim in bad faith in violation of 42 Pa. C.S.A. § 8371 by creating false justifications in order to reverse its initial decision that he was totally disabled.

Unum contends that Corbman was not totally disabled during the elimination period and did not receive appropriate medical care from his psychiatrist. Furthermore, Unum alleges that it did not initially find that Corbman was totally disabled and that its denial of his claim was reasonable and not in bad faith.

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper “if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). Essentially, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present “specific facts showing that there

is a genuine issue for trial.” FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish *prima facie* each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

In this action there are numerous issues of material fact which preclude granting summary judgment in favor of either party. The fact issues precluding summary judgment include, at a minimum, the following:

- (1) whether, based upon the medical evidence, Corbman was totally disabled during the elimination period because he faced an unreasonable risk of worsening his coronary artery disease if he continued to work as a trial attorney;
- (2) whether Unum determined that Corbman was totally disabled at any time during the elimination period or after it had elapsed and, if so, whether Unum wrongfully reversed its decision after the elimination period had elapsed;
- (3) whether Corbman received appropriate medical care from his psychiatrist, Dr. Richard Hole;
- (4) whether Unum breached the Policy by failing to pay Corbman benefits in the amount of \$300,000; and

(5) whether Unum committed acts of bad faith and violated 42 Pa. C.S.A. § 8371 by, *inter alia*, allegedly accepting Corbman's claim of total disability throughout and after the elimination period, but nevertheless denying his claim and fabricating false justifications for its decision.

In Corbman's Motion for Summary Judgment, he raises an issue which includes a contract interpretation aspect. Corbman contends that according to the language of the Policy, Unum did not have the right to reverse its determination that Corbman was totally disabled and to conduct IMEs after the elimination period had expired. Issues of contract interpretation are generally performed by the court rather than by a jury. Madison Constr. Co. v. Harleysville Mutual Ins. Co., 735 A.2d 100, 106 (Pa. 1999). However, this argument does not involve a pure issue of contract interpretation as it relies on the factually disputed claims concerning whether Unum initially determined that Corbman was totally disabled and whether he received medical care that was appropriate for his disabling condition. Therefore, until the intertwined issues of fact are resolved, it would not be prudent to decipher these aspects of the Policy. We will note, however, that the Policy provides that:

We will pay the Business Purchase Amount if:

1. the Insured becomes totally disabled while this policy is in effect;
2. the Insured is receiving medical care which is appropriate for the condition which causes the disability;
3. the elimination period has been satisfied;
4. the Insured was working full time in the Business when the total disability began; and
5. the Insured's interest is sold to the other owners of the Business or to the Business itself.

(Pl's Mot. for Summ. J., Tab 1, p. 6). The Policy also states that, "[w]e will pay benefits due under this policy in United States dollars. We will not pay any benefit until we have sufficient

Proof of Loss. When we have determined that the claim is payable, we will pay according to the Benefits provision.”² (Id. at 8). Therefore according to the provisions quoted above, when the five factors have been met and sufficient proof of loss has been submitted, the claim is ripe. Contrary to Corbman’s suggestion, there is no term in the Policy which states that Unum must pay out benefits immediately after the expiration of the elimination period or that IMEs, to which Corbman agreed, are *per se* prohibited after the elimination period has lapsed.

Based upon the foregoing reasons, Corbman’s Motion for Summary Judgment and for Partial Summary Judgment and Unum’s Motion for Summary Judgment must be denied. An appropriate Order follows.

² Corbman claims that this provision is not in accordance with 40 Pa. C.S.A. § 753(A) because the language is not exactly duplicative of the language found in 40 Pa. C.S.A. § 753(A)(8). However, this provision is substantially similar to the one found in 40 Pa. C.S.A. § 753(A)(8) and the exact language in 40 Pa. C.S.A. § 753(A)(8) is not required as “the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary.” 40 Pa. C.S.A. § 753(A). Here, Unum asserts that its provision was approved by the commissioner.

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ORDER

AND NOW, this 5th day of February, 2002, upon consideration of the Plaintiffs' Motion for Summary Judgment and for Partial Summary Judgment (Doc. No. 40) and the Defendant's Motion for Summary Judgment (Doc. No. 39), and the Responses thereto, it is hereby ORDERED that:

- (1) Plaintiffs' Motion for Summary Judgment and Partial Summary Judgment is DENIED; and
- (2) Defendant's Motion for Summary Judgment is DENIED.

BY THE COURT

Robert F. Kelly,

Sr. J.