

# DENIED

## Podiatric Surgeon

# Sues for Denial of Occupation Disability Benefits

Here's what happens when insurance companies won't pay on a claim.

BY GREGORY MICHAEL DELL, ESQ.

**P**odiatic surgeon Seth J. Okun filed a lawsuit against two insurance companies, Provident Life and Accident Insurance Company and The Paul Revere Life Insurance Company on May 25, 2011 in an effort to recoup his disability benefits from the two insurers after exhausting all other administrative appeals allowed to obtain his rightful disability benefits. Okun as a successful podiatric surgeon, whose single-man practice grew to thirteen locations that employs thirteen doctors in the Tampa Bay area, purchased several disability insurance policies from Provident in 1985.

### Okun Asks for Clarification of Terms

Shortly after procuring the policies, Okun asked for clarification of the insurer's "Total Disability" policies, and was issued a "Specialty Letter" which stated that in Okun's case a total disability was one that applied to Okun if his "injuries or sickness result in disability which prevent [Okun] from performing duties as a podiatrist, [he] would be considered totally disabled...regardless of whether [he could] perform or [did] perform the duties of some other occupation."

With more questions, Okun again contacted the insurer and inquired about the definition of "Own Occupation" and received another "Specialty Letter" defining the phrase as meaning

"inability to perform the substantial and material duties of your occupation. This means the duties of your established occupation immediately prior to disability." As part of this definition, the insurers even gave an example of what that would mean to a podiatrist.

### Background of Disability Insurance Claim

According to Okun and his Florida disability lawyer, "Okun's sole reason in purchasing this disability insurance coverage from the insurers was to provide him with substantial monthly benefits in the event that he suffered any disabling injury or sickness that would prevent him from engaging in his established occupation as a podiatric surgeon, regardless of when the 'Total Disability' presented and/or was otherwise diagnosed." Consequently, Okun purchased additional disability insurance coverage from Provident and two Paul Revere Life Insurance Company Policies, which he was assured had the same coverage verbiage as the first policies he bought and the same terms. Okun continued to pay all his premiums in full and on time.

In July 2007, Okun decided to take a leave of absence from his medical practice and negotiated a buyout agreement with his partners with "an initial cash payment and continuing monthly income for a three (3) year period," with the option to resume his

practice as a podiatric surgeon after the three-year period expired. In March 2008 and June 2009, as a precaution, Okun again asked Provident and Paul Revere to clarify his disability coverage during his leave of absence. Both insurers confirmed that Okun's disability insurance still covered him in the same manner as it did before the leave of absence. Consequently, Okun renewed his disability policies with the two insurers again.

### Okun's Disability Background

In September 2009, while still on leave of absence, Okun began having eyesight problems that included loss of depth perception. Examined by an ophthalmologist, Okun was diagnosed with a "large vitreous floater in the central vitreous of the right eye and posterior vitreous detachment," considered a "permanent and debilitating condition." With continued deteriorating eyesight, Okun visited a second ophthalmologist-retina specialist in November 2009 and had his previous diagnosis confirmed, at which time Okun's doctor limited Okun's activities, telling Okun that he wasn't a candidate for surgical intervention due to the side-effects of an eye surgery and had no viable recommendations to remedy Okun's permanent and debilitating eyesight condition. Thus, Okun's total disability was apparent and documented in September 2009.

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## THE LEGAL CORNER

### DISABILITY BENEFITS

In October 2009, Okun informed UNUM (the procuring entity of Prudential and Paul Revere) of his disability, informing the insurer that he could not perform surgery. He then applied for his disability benefits but was denied his claim on March 2, 2010 with the explanation that the insurer thought that the “information received and reviewed to date does not support any restrictions and limitations that would prevent [Okun] from returning to work in any occupation, including that as a podiatrist.” The insurers further pointed out that at the time of Okun’s disability, he was not working as a podiatrist since his leave of absence did not expire until July 2010, and that they evaluated his claim on Okun’s ability to work at “any gainful employment.”

#### Okun Begins Legal Action

In his complaint, Okun and his Florida disability attorney point out that the insurers “unilaterally and wrongfully converted the terms of Dr. Okun’s disability insurance coverage,” and reduced “his ‘Own Occupation’ coverage to that of ‘any occupation,’” contrary to the “Specialty Letters” Okun had received earlier. Stating that the review of Okun’s disability claim disregarded earlier letters to Okun, attempted to reduce Okun’s coverage and stating that the review of Okun’s claim was “woefully inadequate,” Okun’s Florida disability lawyer assisted Okun in preparing an administrative appeal. Okun’s appeal was presented to Provident and Paul Revere with documentation of Okun’s condition prepared by an independent podiatric surgeon who evaluated Okun’s medical records. Again Okun was denied his disability benefits and another appeal was prepared with medical records and current opinions from his treating physicians about Okun’s condition and inability to function as a podiatric surgeon.

Claiming that Okun’s insurers did not investigate Okun’s claim properly, Okun and his Florida disability attorney filed a twelve-count Complaint in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County, Florida on May 25, 2011. In all 12 counts of his complaint, Okun asks for his entitled disability benefits, interest, attorney’s fees, and a jury trial on tri-

able issues. The 12 counts consist of:

Count I—Promissory Estoppel—Alleges that since the insurers previously confirmed the meaning of the terms “total disability” and “own occupation” in the “Specialty Letters” and knew that Okun was relying on those confirmations when he continued paying premiums, the insurer s are “now stopped from reducing and/or denying” Okun his total disability benefits coverage.

Count II—Reformation—Alleges

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that even though Okun’s policies were sold to other insurers, the same terms should have been in effect and the original coverage agreement was to have been carried over from Okun’s initial insurance policies to any predecessor policies and any “ambiguous, conflicting and/or contradictory terms should be reformed to express” the same coverage under all policies.

Count III—Declaratory Judgment on the Provident Policy—Okun asks for a declaration of total disability under his Provident Policy along with an award of all disability benefits he is entitled to.

Count IV and Count V—Declaratory Judgment on Paul Revere Policy I and Policy II—Okun asks the Court to declare him totally disabled under his two Paul Revere policies and receive his full disability benefits as provided for in each policy.

Count V I—Breach of Contract on The Provident Policy—Because of its wrongful claim denial of Okun’s disability benefits, Okun asks the Court to require Provident to cure its breach of contract and give Okun his full disability benefits and any compensatory damages he is entitled to.

Count VII and Count VIII—Breach of Contract on Paul Revere Policy I and Policy II—Because of its wrongful claim denial of Okun’s disability benefits, Okun asks the Court to require Paul Revere to cure its breach of contract and give Okun his full disability

benefits and any compensatory damages he is entitled to as provided in both Paul Revere policies.

Count IX, Count X, and Count XI—Breach of Implied Warranty of Good and Fair Dealing on The Provident Policy and the two Paul Revere policies respectfully, Okun asks for compensation of the three insurers’ damage to him by paying his past-due and future disability benefits, interest, costs, attorney’s fees and any other relief deemed proper by the Court.

Count XII—Statutory “Bad Faith”—Okun and his Florida disability lawyer list numerous Florida statutes that Provident and Paul Revere have violated in their treatment of Okun and his disability claims, all following the reasoning that Okun, in good faith, trusted the insurers to follow Florida statutes in insuring him, acting in his best interest, and complying with the terms of his contract with them, but did not.

This case will be interesting. There is case law in Florida which states that the occupation that was last worked by an insured is the occupation that an insurance company must consider. If the podiatrist in this case did not do any other work in between the time he stopped working and the date of disability, then Unum would be wrong for not considering his occupation to be that of a podiatrist. **PM**

*Editor’s Note: PM will publish a follow-up article detailing the results of this case.*



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