

Disability Insurance

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Federal Judge Allows Improper Claims Allegations On Breach Of Contract Claim To Proceed

MIAMI - A federal judge on Jan. 23 refused to dismiss claims for improper claims handling, rejecting the insurer's argument that such claims amount to bad faith and are immaterial to a breach of contract action. U.S. Judge Marcia G. Cooke of the Southern District of Florida said she was "unwilling to take such a drastic step" by striking the allegations (Scott Herman v. Metropolitan Life Insurance Co., No. 06-61607, S.D. Fla.).

(Order in Section G. Document #17-070217-107R. Motion to dismiss available. Document #17-070216-028B. Herman response brief available. Document #17-070216-029B. Complaint available. Document #17-070216-030C.)

Scott Herman filed a breach of contract action in October 2006 against his long-term disability insurer, Metropolitan Life Insurance Co., after it terminated his benefits, finding that he was no longer disabled under the plan. Herman alleged that MetLife breached the disability policy and breached the implied covenant of good faith and fair dealing in regard to the express provision in the policy.

'Total Disability' Provisions

Herman alleged that MetLife failed to properly interpret the "total disability" and "monthly benefit for total disability" provisions and failed to interpret and apply the "time of payment of claim" provision. Herman alleged that MetLife violated the covenant of good faith by requiring proof of loss far beyond what is required under the policy.

"MetLife has requested far more than 'proof of loss forms' sent to plaintiff or a written statement of the nature and extent of plaintiff's loss to the point of ridicule in violation of the implied covenant of good faith and fair dealing, and with respect to the purported 'proof' requested to plaintiff, defendant MetLife has failed to fairly review and analyze that purportedly necessary proof in violation of the covenant of good faith and fair dealing," Herman claimed.

In its motion to strike filed Dec. 18, MetLife argued that Herman has improperly alleged bad faith conduct in his breach of contract action, which should be stricken. MetLife said that even if the allegations were true, they cannot constitute breach of contract.

"At most, these allegations might be pertinent in a subsequent bad faith lawsuit," MetLife said. "But such a lawsuit can only be brought if Herman prevails on his breach of contract claims. The sole basis for breaching the contracts, according to their terms, is the failure to pay benefits and when the person meets the definition of disability, the policies are in force, and other terms, conditions, limitations and exclusions of the policies apply."

MetLife argued that Herman should not be allowed to make bad faith allegations disguised as support for his breach of contract claims.

Relief For Contract

In his response brief filed Jan. 3, Herman argued that his complaint seeks relief for the disability contract only. Herman said the allegations in his complaint have nothing to do with "bad faith" claims handling and allege violations of specific provisions of the disability contract.

"In the case at bar, the implied covenant of good faith and fair dealing is a contractual term that is inherent within the disability contract entered into between the plaintiff and defendant," Herman argued. "The plaintiff's claim that the defendant 'breached the contract and likewise breached the implied covenant of good faith and fair dealing' is supported by the essential and relevant factual allegations that the defendant had breached multiple express terms of the disability contract."

The court, in its two-page ruling, denied MetLife's motion to strike, finding that to strike a pleading is a drastic remedy "to be resorted to only when required for the purposes of justice," citing *Augustus v. Bd. of Public Instruction of Escambia County, Fla.* (306 F.2d 862, 868 [5th Cir. 1962]).

Herman is represented by Gregory Michael Dell and Cesar Gavidia Jr. of Dell & Schaefer in Hollywood, Fla. MetLife is represented by Steven M. Ebner and John E. Meagher of Shutts & Bowen in Miami.

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